DOCUMENT RESUME

ED 134 790 CE 009 828

TITLE	Proprietary Vocational and Home Study Schools. Final Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 438).
INSTITUTION	Federal Trade Commission, New York, N.Y. Bureau of Consumer Protection.
PUB DATE	10 Dec 76
NOTE	579p.
AVAILABLE FROM	Superintendent of Documents, U.S. Government Printing Office, Washington, D. C. 20402 (Stock No. 018-000-00197-7, $6.10).
EDRS PRICE	MF-$1.16 HC-$31.47 Plus Postage.
DESCRIPTORS	*Accountability; Administrative Policy; Business Responsibility; *Consumer Protection; *Correspondence Schools; Court Litigation; Educational Accountability; Federal Aid; Federal Legislation; Government Role; Post Secondary Education; *Proprietary Schools; *Publicize; Public Policy; School Policy; Standards; Student Characteristics; Student Costs; Student Enrollment; Student Recruitment; *Vocational Schools
IDENTIFIERS	Federal Trade Commission Act

ABSTRACT

This final report to the Federal Trade Commission on proprietary vocational and home study schools by the staff of the Bureau of Consumer Protection consists of two parts. Part I presents an analysis of all materials contained in the rule-making record, all documentary evidence, transcribed testimony, comments, and rebuttals. It describes the vocational school industry, the students it enrolls, the claims and representations it makes, and its use of commissioned sales representatives. This part also analyzes dropout rates and refund policies, student job placement difficulties, and existing regulatory patterns. Part II contains the staff's conclusions drawn from the record and its recommendations based on these conclusions, along with a section-by-section description of the proposed rule and the basis for the recommendations. Industry arguments against the proposed rule are included. This report further provides detailed references to the prevalence of acts and practices treated by the proposed rule, the Bureau's analysis of how these practices are unfair or deceptive, and a discussion of the economic effect of the rule on both small businesses and consumers. (MF)

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ED134790

PROPRIETARY VOCATIONAL AND HOME STUDY SCHOOLS

Final Report to the Federal Trade Commission and Proposed Trade Regulation Rule

(16 CFR Part 438)

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BUREAU OF CONSUMER PROTECTION

This report, required by Section 1.13(g) of the Commission's Rules of Practice, contains the staff's analysis of the record and its recommendations as to the form of the final rule. The report has not been reviewed or adopted by the Commission. The Commission's final determination in this matter will be based upon the record taken as a whole, including the staff's report and the report of the presiding officer under Section 1.13(f) of the Rules, and comments upon these reports received during the 60-day period after the staff report is placed on the public record.

CE 009 828

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OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Commission

DATE: December 10, 1976

FROM : Margery Waxman Smith, Acting Director MWS
Bureau of Consumer Protection

SUBJECT: Proposed Trade Regulation Rule
Proprietary Vocational and Home Study Schools
J02

As the record in this rulemaking proceeding makes clear, many vocational schools have engaged in unfair and deceptive practices in their advertising, recruitment, and refund policies and practices. The major elements of the rule -- affirmative disclosures in advertising of jobs and earnings; additional post-enrollment affirmative disclosures, including drop-out rates; reaffirmation; and pro-rata refunds -- would define with specificity, and work to prevent, the unfair and deceptive practices in this industry. We expect the resulting increase in the flow of relevant information to lead to schools' upgrading the quality of training offered, students' choosing the best courses, and in general to the industry's placing greater emphasis on results.

Final recommendations from the Bureau will be made after opportunity to review comments received during the 60-day comment period. This memorandum is intended merely to raise and seek public comment on several issues presented by the staff report.

I commend the Bureau staff and the Presiding Officer for handling the large record in this proceeding with dispatch. In addition, the contributions of the Boston, New York, Chicago, San Francisco, and Los Angeles Regional Offices, which worked on the hearings held in those cities have been most helpful.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

I

As recommended by the staff report, the rule would require all written or broadcast 1/ "job or earnings claims" to be accompanied by both the cautioning notice set out in (a)(1) and the relatively detailed "track record" disclosures specified in (b)(3). Although I can forsee some problems with disclosures in print advertising where the ads themselves are only a few short lines, I am more concerned about requiring lengthy disclosures in broadcast advertising because it will make it a practical impossibility for most schools to advertise over radio and television.

The rule defines the term "job or earnings claim" broadly, as to include testimonials and claims like "be a draftsman." Consequently, the rule would require the cautioning notice and "track record" disclosures to be made any time an advertisement claimed to train students for a particular occupation or used testimonials from former graduates. It is difficult to imagine an advertisement for a vocational school which would not make a job or earnings claim, but presumably statements such as "we train you in drafting skills" would not be included. Severely restricting the type of claims schools can make without running lengthy mandatory disclosures is likely to place a de facto ban on broadcast advertising by schools covered by the rule.

The need for the extensive "track record" disclosures is drawn from the evidence in the rulemaking record that job and earnings claims have been in large part false and deceptive. Staff believes the most effective way to correct this problem is to require all future jobs and earnings claims -- of whatever content -- to include actual performance data defined and presented in standardized form. The length of the required disclosure results from a number of factors -- the crucial importance of the drop-out rate (as well as the placement rate) of many schools, the difficulty of meaningfully defining "related job" (thus necessitating salary range disclosures), and some schools' stated interest in providing placement data for drop-out as well as for graduates.

1/ Non-broadcast oral statements by school representatives would not need to be accompanied by simultaneous "track record" disclosures. However, when a student signs an enrollment contract, and if job and earnings claims have been made to him in any form, the "track record" disclosures would be made in the Disclosure and Affirmation Form given to the student after signing.

While these considerations support a general requirement that "track record" disclosures accompany written jobs and earnings claims and be made at the time a prospective student signs an enrollment contract, I question whether they can carry the heavier burden of justifying a ban on broadcast advertising. One result of mandating these disclosures may be to deter schools with high placement statistics from disclosing that information. Such an impediment to the flow of truthful advertising may preclude prospective students from access to information relevant to making an informed choice, as well as raise questions under Virginia Board of Pharmacy v. Virginia Citizens Consumers Council, 96 S.Ct. 1817 (1976).

In Virginia Pharmacy, the Supreme Court held that the First Amendment protects to some extent the right to disseminate and to receive truthful information through advertising, but made clear that this ruling would not shield false or deceptive commercial speech from regulation. In briefs in several cases, the Commission has taken the position that the Virginia Pharmacy opinion does not alter the established principle that the Commission may "fence in" a proven law violator by prohibiting him from engaging in otherwise lawful activities or from making statements that might be truthful or nondeceptive. I also assume Virginia Pharmacy has not adversely affected the Commission's authority to require corrective advertising in cases where prior advertising has been found to be false and deceptive or unfair. While the implications of Virginia Pharmacy have yet to be defined, comment would be particularly useful on the question of whether a rule barring or establishing preconditions for truthful advertising by schools would be overly broad unless supported by a record showing that all or most members of the industry covered by the rule had engaged in false, deceptive or unfair advertising of the type to be remedied.

I would also raise for comment the possibility of a less onerous disclosure alternative for electronic media advertisements containing job or earnings claims. For example:

> What we just said about jobs or earnings won't tell you if you will get the kind of job we train you for. You may want to know how our previous students did. Be sure to get this information from us before you decide.

or

> The Federal Trade Commission requires us to tell you how many students drop out and how many students finds jobs as _________. You should get this information before you decide.

In addition to avoiding the problems discussed above, the shorter disclosure may be more meaningful in the broadest context.

Also, further comment would be useful on ways in which the readability of the "track record" disclosures could be improved.

II

While I strongly endorse the idea of mandatory pro rata refunds to students who drop out as a way of preventing unfair refund policies and providing a means of correcting other unfair and deceptive practices, I would like to see comments on two areas.

First, it seems clear that schools should retain some amount as compensation for administrative enrollment costs. The staff believes that a $25 maximum is fair for this purpose. The Commission would benefit by comments on (a) what kinds of costs should be recoverable as administrative enrollment costs; and (b) what is a fair maximum.

Second, does a pro rata refund fairly compensate the school for the costs incurred in providing instruction to the student for the period of his participation? The issue is whether any schools have a cost structure such that disproportionate costs are incurred during the first part of the course, or are incurred irrecoverably as soon as the student enrolls.

The presiding officer concluded that the record lacked the cost information necessary to impose a pro rata refund requirement on all schools. He recommended that the Commission adopt the current accrediting association policy most favorable to students and consider instituting further proceedings to determine with more certainty the economic aspects of a pro rata refund requirement.

The staff report concludes that for a refund policy to avoid being in itself unfair and deceptive it must be strictly pro rata. It also finds that a pro rata policy is necessary to prevent other unfair and deceptive practices, by removing a school's incentive to engage in unfair practices and permitting a student to withdraw from a course if he finds that he has been misled. The staff report concludes that the Commission has sufficient authority to use pro rata refunds to address these practices; that the potential "empty chair" problem can be addressed by better planning by schools; and that schools with high drop-out rates would, under the rule, need to improve their enrollment practices or experience lower profits. Primarily, the staff is concerned that a student should not be required to bear a full share of "acquisition costs" of advertising, commission and other sales expenses that have been shown in substantial part to be incident to unfair and deceptive practices.

The Commission would be aided by comments on this disagreement. In particular, comments should focus on whether distinctions should be made among different kinds of schools.

III

Section (b)(2) of the proposed rule provides that "[i]f the seller makes any oral, written or broadcast job or earnings claims to a buyer," then the seller must make the (b)(3) "track record" disclosures in the Disclosure and Affirmation Form after a prospective student has signed an enrollment contract.

This provision of the rule, like Section (a), reflects the belief that if a seller makes job or earnings claims, the recipient of those claims [whether all viewers of an ad, or a single prospective student who has signed an enrollment contract] needs to know and should be provided information on the school's actual success in preparing students for jobs.

More specifically, Section (b)(2) triggers the post-enrollment "track record" disclosures if job or earnings claims are made "to a buyer." As now drafted, this language may raise problems of proof as to whether a particular buyer received job or earnings claims from the school and thus should have been given the (b)(3) disclosures after signing.

It may be easier to enforce this section if a school is required to give post-enrollment "track record" disclosures where the school has made any jobs or earnings claims -- *i.e.*, Section (b)(2) should be redrafted to read:

> If the seller makes any oral, written or broadcast jobs or earnings claims to buyers, then the seller, in accordance with paragraph (c) of this section, shall make the disclosures specified in sub-paragraph (b)(3) of this paragraph. [Change is underlined.]

While this provision would be slightly broader than the current proposal, it is sufficiently supported by the rationale that job and earnings claims are not required to be made, but that if they are, certain performance disclosures must also be made to avoid deception.

This revision opens up the possibility that a school which has a policy of not making job and earnings claims may not be able to prevent all its salesmen from making such claims. In that case, if the "track record" disclosures were not routinely made by the school (as they probably would not be), contracts affirmed after that time could be invalid under Section 2(d)(1) of the rule.

IV

A particularly noteworthy aspect of the proposed rule is its exclusion of schools that enroll fewer than 75 students in a calendar year. In the attached report it is estimated that while this exclusion would encompass 60 percent of the approximately 8,000 existing schools, 2/ these schools account for less than 10 percent of vocational school students. Thus, while the rule would exclude most operators, it would protect the vast majority of students.

The record shows that practices of the type addressed by the rule by schools of this size are less serious and less frequent. And, because of their size, these schools have less impact on enrollment practices in the vocational school field; at the same time, extending the rule to cover them would have a substantial impact on the Commission's compliance program, should a rule be issued.

The exclusion would, in addition, minimize the impact of the rule on small business, where the costs of compliance would otherwise fall the most heavily.

Attachment

2/ More specifically, it is estimated that the exclusion would encompass 75 percent of the cosmetology schools, 70 percent of the flight schools, 35 percent of the trade and technical schools, 25 percent of the business schools, and a very small percentage of correspondence schools.

Preface

Pursuant to Section 1.13(g) of the Commission's Rules of Practice, the Bureau of Consumer Protection has prepared this Staff Report containing the Bureau's analysis of the evidentiary record, its recommendations for a final Trade Regulation Rule, and its comments upon the Presiding Officer's Report.

Based on the facts in the record that have been accumulated during the course of this proceeding, the Bureau is recommending a Trade Regulation Rule for Proprietary Vocational and Home Study Schools that includes the following major provisions:

1. a requirement that printed or broadcast job and earnings claims be accompanied by certain qualifying disclosures;

2. mandatory disclosure of drop-out rates for all schools and disclosure of placement and salary statistics for schools that engage in job and earnings advertising;

3. an affirmation period during which the student receives the disclosures required by the Rule and makes his decision on whether he will enter the course; and

4. a pro rata refund policy calculated on a class-by-class basis for residence schools and a lesson-by-lesson basis for home study schools.

While the Bureau has modified the originally published proposed Rule[1] to accomodate comments and suggestions concerning ambiguities and technical difficulties and to facilitate compliance, the essential provisions of the published Rule have remained intact.[2] It is the Bureau's position that the Commission must act forcefully to put into place remedies which will offer consumers relief from numerous false, deceptive and unfair marketing, solicitation, recruitment, and other business practices. The Rule we are proposing herein accomplishes this result in two ways: (1) by providing consumers with material information and an opportunity to reflect on that information; and (2) a non-penalizing refund policy that also reduces schools' market incentives to engage in false, deceptive and unfair practices.

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[1] Proposed 16 C.F.R. Part 438, Proprietary Vocational and Home Study Schools, 40 F.R. 21048, May 15, 1975.

[2] A description of the Rule we are recommending here and its relationship to the Rule previously published by the Commission appears in Part II, Section III, infra. At this point, it would not be possible to rehearse that discussion in full. However,
(Continued)

The Report attached hereto consists of two Parts. The first Part contains an analysis of all materials contained in the rule-making record including all documentary evidence, transcribed testimony, comments, and rebuttal submissions. This Part describes the vocational school industry, the students it enrolls, the claims and representations it makes, and the use it makes of commissioned sales representatives. This Part also analyzes the extent to which consumers recruited into proprietary schools fail to complete all or part of their vocational courses and the difficulties these consumers face in obtaining jobs in the positions for which the school purports to provide training. Finally, this Part includes a description of existing attempts to regulate the proprietary school industry and the extent to which other federal agencies have subsidized that industry through grant, benefit, and loan programs.

The second Part of the Report contains the staff's conclusions drawn from the factual record and its recommendations based on those conclusions. This Part describes the Rule being recommended and offers explanations for changes made to the originally published proposed Rule based on the comments and suggestions of interested parties. This Part also analyzes those arguments raised by industry members to try to persuade the Commission to stay its hand in this field. Finally, as required by the Rules of Practice, this Part comments upon the Presiding Officer's Report.

Moreover, to assist the Commission in meeting the requirements of Section 18(d)(1) of the Federal Trade Commission Act, we have provided in Part I of this Report detailed references to the prevalence of acts and practices treated by the proposed Rule and in Part II offer the Bureau's analysis of the manner and context in which these practices are unfair or deceptive. Furthermore, Part II contains a discussion of the economic effect of the Rule, taking into account its effect on small businesses and consumers.

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[2] (continued)

it is important to note several changes in the coverage of the Rule that are significant in analyzing the Commission's compliance responsibilities. As recommended here, the Rule would exclude from its coverage: (1) certain courses costing less than $100; (2) courses which consist of accredited college-level instruction that is generally applicable to a bachelor's degree; (3) buyers whose enrollment in a particular school is both paid for and required by an institutional third party (*e.g.*, students enrolled in MDTA programs); and (4) schools enrolling 75 students or less per calender year.

PART I - ANALYSIS OF RECORD EVIDENCE

I. BACKGROUND

In recent years the Commission has embarked on numerous investigative and litigative efforts against proprietary vocational and home study schools under its statutory mandate. These efforts required, and continue to require, a substantial investment of Commission resources in an attempt to prevent false, deceptive, and unfair practices by proprietary schools. The resource investment has been remarkable: the Commission has over the years entered into well over one hundred litigated and consented orders in vocational school cases.[1]

The frequency and similarity of the practices found by the Commission to be offensive to Section 5 of the F.T.C. Act led the Commission to adopt a set of Guides for Private Vocational and Home Study Schools.[2] These Guides contained a lengthy listing of acts and practices that the Commission determined to be false, deceptive, and unfair, and sought to catalogue in some detail those major sources of consumer abuse that the Commission had identified from its pervasive litigative program and from the hearings on the Guides themselves. In brief, the Guides required that industry members discontinue such practices as: misleading references to the school's affiliation or type of instruction; erroneous application of the terms "approved" and "accredited"; deceptive representations concerning facilities, instructors, services, and status; deceptive use of diplomas, degrees, or certificates; use of "help wanted" columns to imply that employment rather than training was offered; misleading pricing practices and erroneous use of the word "free"; unfair collection and credit practices; failure to disclose facts about the school's policies regarding attendance, supplies, class size, and placement service. More importantly, the Commission's Guides interpreted Section 5 to prohibit direct or indirect misrepresentations regarding availability of employment, to preclude false references to the school's selectivity in enrollments, and require disclosure of "material facts concerning the school. . . which are reasonably likely to affect the decision of the student to enroll therein."[3]

In issuing the Guides, the Commission sought to achieve a "more widespread and equitable observance of the laws administered by the Commission with a view to protecting the public and to provide a basis for industry-wide abandonment of unfair and deceptive acts and practices on the part of proprietary schools."[4] No such abandonment has occurred. Indeed, the Commission was compelled to initiate additional and more comprehensive investigations after the Guides were promulgated. Since 1973 alone, the Commission has issued twenty complaints against these schools, all of which contain substantially identical provisions.[5] Further, the Commission has maintained active investigative resolutions for home study and residential schools which have generated ongoing investigations of a group of unnamed schools.[6]

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[1] A list of a large portion of these cases can be found at 2 Trade Reg. Rep. Section 7591 (1976).

[2] 16 C.F.R. 254 (May 16, 1972). At the same time, the Commission released a proposed statement of enforcement policy regarding the cancellation and refund practices of proprietary schools.

[3] 16 C.F.R. 254.10.

Having sought and failed to obtain voluntary industry compliance with the Guides, and having determined that case-by-case adjudication was not achieving the requisite prophylactic effect,[7] the Commission turned to its rulemaking authority in order to establish industry-wide legal requirements.

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[4] 16 C.F.R. 254, Introduction (May 16, 1972).

[5] Nationwide Training Service, Exhibit C-2814; American Tractor Trailer Training School, Exhibit D-9025; Career Academy, C-2546; Commercial Programming Unlimited, Exhibit D-9029; Diesel Truck Driver Training School, Exhibit C-2759; Driver Training Institute, Exhibit D-9060; Electronic Computer Programming Institute, Exhibit D-8952; Lear Siegler, Inc, Exhibit D-8953; Fuqua Industries, Exhibit D-2626; Control Data Corp, Exhibit D-8940; Lafayette Academy, Exhibit D-8963; LaSalle Extension University, Exhibit D-5907; MTI Business Schools of Sacramento, Exhibit C-2500; Nationwide Heavy Equipment Training Service, Exhibit C-2759; New England Tractor Trailer Training, Exhibit D-9026; New York School of Computer Technology, Exhibit D-9029; Tri-State Driver Training, Exhibit 732-3409; Weaver Airline Personnel School, Exhibit C-2638; Worldwide Systems, Exhibit C-2683; Jetma Technical Institute, Exhibit D-9061.

[6] File Nos. 722-3149; 752-3034.

[7] As with any adjudicative exercise, litigations begun in this field are costly and time-consuming. The typical case calls for extensive pre-complaint investigation, lengthy negotiations, and hearings before an administrative law judge. While such costs would be readily justifiable if the filing and pursuit of these cases offered the prospect for improving the practices of other schools in the industry, the record shows that the schools' practices have not been significantly altered by these cases.

Other commentators have concurred with the Commission's viewpoint that case-by-case litigation does not always produce the salutary results expected. For example, in its series of articles on abuses by proprietary vocational schools, the Washington Post concluded:

> ... [W]hen it comes to enforcement activity the FTC's investigations have been necessarily tedious,

(Continued)

On August 15, 1974, the Commission published for comment and public hearings a proposed Trade Regulation Rule for Proprietary Vocational and Home Study Schools.[8] As proposed, the Rule contained the following provisions applicable to schools purporting to prepare or qualify individuals for employment or to improve their employment-related skills:

1. limitations on employment and earnings advertising which require a school to substantiate advertising claims of placement success and which forbid the use of generalized employment and earnings data;
2. an affirmative disclosure requirement that a school inform each consumer of its drop-out rate;
3. a requirement that placement rates and salary levels be disclosed if the school has made any placement and/or earnings claims;
4. a post-contractual cooling-off period which requires that the consumer reaffirm the contract; and
5. a refund rule requiring return of the consumer's money (or cancellation of indebtedness) to be computed on the basis of the instruction actually received or that which could have been received prior to a withdrawal from a

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[7] (Continued)
its proceedings ponderous, and its penalties limited.

Washington Post, "The Knowledge Hustlers," Part IV, "For Thousands Accreditation has Spelled Deception" (June 26, 1974).

Others have been less charitable. In its multipart series on proprietary school abuse, the Boston Globe's Spotlight Team, after characterizing the Commission's proprietary school program as "an overpromoted sham", concluded:

> In 1972, it said it intended to sue three major computer schools under the Federal Trade Commission Act for deceptive and unfair advertising and sales practices. The news gained national attention, but now, almost two years later, the cases are still being 'negotiated,' no suits have been filed and at least one school, Electronic Computer Programming Institute, is still, engaged in the allegedly deceptive acts.

Boston Globe, "Spotlight Series," Part VII, "U.S. Gives Millions, Requires Little of Career Schools" (April 2, 1974).

[8] 39 Fed. Reg. 29385 (August 14, 1974). The Commission authorized a 60-day extension of time to file written comments and views and established January 15, 1975 as the closing date for such comments. 39 Fed. Reg. 40789 (November 20, 1974).

> course. There is also a provision permitting the school to retain a fee of up to $25 in order to defray the administrative costs of enrolling the student.

Hearings on the proposed Rule were scheduled for six cities and were actually convened in three cities (Boston, Massachusetts on November 18, 1974; New York, New York on December 1, 1974; and Washington, D.C. on December 16, 1974) prior to the postponement of all rulemaking hearings by the signing of the Magnuson-Moss Warranty - F.T.C. Improvements Act.[9]

After amendment of the Commission's Rules of Practice pursuant to the Magnuson-Moss Act, the Commission republished the proposed Vocational School Rule on May 15, 1975, with an invitation to interested parties to comment upon the proposed Rule and to submit proposals for disputed issues of fact that were material and necessary to resolve.[10] On September 29, 1975, the Presiding Officer published a Final Notice in the Federal Register containing a listing of the dates, times and places for public hearings, the designated disputed issues, and instructions to witnesses.[11] After evaluating appeals on this designation of issues, the Commission redesignated the issues and duly notified interested parties.[12] Thereafter, public hearings were convened in San Francisco, California on December 1, 1975; Los Angeles, California on December 15, 1975; and Chicago, Illinois on January 12, 1976.

During the course of these proceedings, the staff of the Bureau of Consumer Protection (herein referred to as Bureau) put on the public record over 87 volumes of documentary evidence and additional binders of related physical exhibits. Public hearings were conducted in the six cities mentioned above for a cumulative total of 44 days. Over 400 witnesses appeared and presented their views and comments orally, including federal and state officials, representatives of major trade associations and consumer groups, legal aid attorneys, economists, market experts, educational experts, school owners and operators, individual consumers and students, and sales representatives. These individuals introduced over 125 documentary exhibits to their own testimony and rebuttal submissions to testimony of others. In addition, approximately

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[9] P.L. 93-637, 88 Stat. 2183, 15 U.S.C. 2301 (1975).

[10] 40 Fed. Reg. 21048 (May 15, 1975). The Commission authorized a 60-day extension of time to submit proposed disputed issues of fact and set September 18, 1975 as the closing date for such submissions.

[11] 40 Fed. Reg. 44582 (September 29, 1975).

[12] 40 Fed. Reg. 55368 (November 28, 1975).

900 comments were received containing the written views and opinions of interested persons.[13]

The staff of the Bureau of Consumer Protection has reviewed the entire public record in this matter including all written comments, transcribed testimony, testimonial exhibits and rebuttal submissions. This Report of the Bureau contains its evaluation of the evidence accumulated in the proceeding and provides the staff's recommendations to the Commission regarding the form of a final Trade Regulation Rule. The Report also takes into account the Presiding Officer's report as required by section 1.13(g) of the Commission's Rules of Practice.

The evidence on the record indicates that the Commission must act forcefully to proscribe unfair and deceptive acts and practices engaged in by proprietary vocational schools and to offer remedial relief to consumers in order to discourage such acts and practices in the future. The Rule that the Bureau is recommending to the Commission accomplishes both objectives by providing consumers with (1) material information and an opportunity to reflect on that information prior to entering into a binding contractual obligation; and (2) a non-penalizing refund that reduces schools' market incentives to engage in false, deceptive and unfair practices.

While the Bureau has altered the originally published Rule in order to accomodate comments and suggestions concerning ambiguities and technical difficulties and to facilitate compliance, the major remedial characteristics of the Rule have remained unchanged.

In order to facilitate the Commission's review of the voluminous public record, we have prepared this Report in a manner that closely tracks the filing of documents on the public record, and each section in Part I of the Report details the evidence available in each substantive category. Section II describes the proprietary vocational school industry. Section III discusses the profile of the student who is typically attracted to a proprietary vocational school. Sections IV and V detail the advertising, sales, and enrollment techniques that are applied by schools to encourage consumers to enroll in vocational school courses. Sections VI and VII provide available information on the number of students who fail to complete their courses of study and the reasons therefor, the success (or lack of success) of students in finding jobs for which they were purportedly trained, schools' ability to discover their students' placement success, the refund policies utilized by schools, and the extent of consumers' injury and loss. Section VIII describes existing forms of regulation and evaluates the viability of mechanisms that purport to provide remedial relief to consumers.

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[13] All such comments were separately filed under category K of the public record and appear in volumes 215-38-1-11-1 through 215-38-1-11-17.

Part II of this Report describes the Rule recommended by the staff, based on its review of the record and comments, and the reasons for those recommendations. Part II also includes an assessment of arguments offered during the course of the proceeding which criticized portions of the Rule, proposals for amendments to the Rule or suggestions that the Commission stay its hand in this field, and consideration of the Presiding Officer's Report.

II. The Proprietary Vocational School Industry

A. Introduction

In order to place the discussion that follows in this Staff Report in context, this section will provide a detailed description of the schools that were the subject of this rulemaking proceeding, and show generally how they operate. Such a description will serve to inform the Commission factually of the nature of the industry members that will be subject to the Rule, assist it in evaluating the remedies proposed by the Bureau, and provide guidance in understanding industry objections to the proposed Rule.

In referring to proprietary vocational schools, emphasis is placed on those non-public schools that are vocational in orientation. As will be discussed in some detail later, job, career, or skill training are the primary factors that induce students to attend proprietary schools.[1] The desire to obtain a new job or new skill or, perhaps, to obtain advancement in an existing job, motivates the preponderance of students who attend proprietary schools.

The schools themselves are organized in a manner that strives to meet the student's single-minded purpose of obtaining new or improved job potential. Every major survey or study that has reviewed the attributes of proprietary schools has concluded that these schools' characteristics--size of classes, length of courses, number of course offerings, cost, qualifications of teaching staff, size of facilities, availability of equipment--are predicated on the desire to provide job and skill training to students.[2]

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[1] See Part I, Section III-E, infra.

[2] See, e.g., A. Harvey Belitsky, Private Vocational Schools, Their Emerging Role in Postsecondary Education, Upjohn Institute for Employment Research (1970), Exhibit A-8; A Context for Policy Research in Financing Postsecondary Education, A Staff Report, The National Commission on the Financing of Postsecondary Education (1974), Paper 3, Exhibit H-157; A Comparative Study of Proprietary and Non-Proprietary Vocational Training Programs, American Institute for Research (1972), Chapter 3, Exhibit A-3; Wellford W. Wilms, The Effectiveness of Public and Proprietary Occupational Training, Center for Research and Development in Higher Education, University of California, Berkeley (1974), Chapter 3, Exhibit C-110; Wellford Wilms, Proprietary vs. Public Vocational Training, Center for Research and Development in Higher Education, University of California, Berkeley (1974), Exhibit A-1, and sources cited therein; Bond, Postsecondary Education in Accredited Private Schools, Indiana University (1974), Chapter 2, Exhibit C-167; Robert Allen and Thomas E. Gutteridge, The Career Profiles of Business Majors from Two-Year Public (Continued)

Indeed, the single-purpose vocational nature of these schools has led many commentators to conclude that all proprietary schools must share certain attributes essential to survival in the market place. Typically, these commentators assume that because proprietary schools are based in a competitive, profit-making context, they must perform their function of job-training and placement more efficiently and successfully than any other form of vocational training.[3]

As this Report discusses in some detail later, the assumption of placement success has proven to be more accurate in theory than in practice.[4] It is important to emphasize here, however, that

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and Proprietary Colleges, State University of New York at Buffalo, Exhibit C-166; Private Occupational Schools, Stanford Research Institute, Report No. 498 (1973), Exhibit A-35.

[3] See, e.g., Wellford W. Wilms, The Effectiveness of Public and Proprietary Occupational Training, Exhibit C-110, whose theoretical assumptions surmised that because proprietary schools were motivated by profit and must compete in the market they would have the following attributes:

1. limited program objectives with single purpose occupational goals;
2. select only students who show a high probability of successful placement;
3. offer short-term curricula geared to the demands of employers;
4. offer courses at the most efficient costs;
5. hire, retain and promote only those teachers who have demonstrated an ability to provide vocational skills;
6. are successful in placing their students.

Based on the results of his study, Wilms found that the assumed efficiencies in proprietary training did not actually result in improved performance by such schools in placing their graduates in job positions. Id., p. 171. For other studies and papers making similar assumptions see A. Harvey Belitsky, Exhibit A-8; brief of the National Association of Trade and Technical Schools, pp. 8-16, Exhibit K-520; and Buick, "Schools Where Students Pay to Learn Paying Jobs," Fortune (December 1975), p. 124 et seq.

[4] See Part I, Section VII-D, infra.

whatever success these schools may demonstrate, their primary purpose is to offer training that is geared to employment in various vocational and occupational fields.

B. Vocational School Characteristics

While the total number of proprietary vocational schools fluctuates, figures most often used are in the 7,000 to 8,000 range.[5] Of this number, the vast majority are residential schools--*i.e.*, schools that require the student to be physically present in a classroom setting--with over 126 schools that are correspondence (home study) in nature.[6]

The instructional approach of correspondence schools differs from the typical classroom setting found in residential schools. Teaching by home study involves the mailing of lessons to the student who reads the instructional materials, completes the lesson examination, and returns the examination to the school. The correspondence school thereupon grades the lesson and returns the graded lesson plus the next group of materials to the student.[7] Grading is generally accomplished by a group of instructors who are responsible for providing the student with comments and supervision during the course of study.[8]

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[5] In "Private Occupational Schools", Report No. 498 (October 1973), the Stanford Research Institute estimated that there were 10,000 proprietary schools. *See* p. 2, Exhibit A-35. However, the United States Office of Education's (USOE) most recent data indicated that there were slightly over 6600 proprietary vocational schools. *See* Kay, *Enrollments and Programs in Noncollegiate Postsecondary Schools with Occupational Programs*, 1973-74, HEW, National Center for Education Statistics (1976), p. 3, Exhibit H-237 (hereinafter, *Schools with Occupational Programs*). *See also* John Alden, *Federal Involvement in Postsecondary Proprietary Vocational Institutions*, HEW, unpublished paper (1973), at 3 (hereinafter cited as "Alden"), Exhibit H-30; *A Context for Policy Research in Financing Post-Secondary Education*, Staff Report NCFPSE (June 1974), pp. 68-69, Exhibit H-157.

[6] *Schools with Occupational Programs*, p. 4, Exhibit H-237. *But see* Alden, p. 3, Exhibit H-30, where it is estimated that there are 700 proprietary correspondence "schools". The divergence in results may be partially explained by dif-ferences in reporting techniques. Often one correspondence firm may operate several subsidiary "schools". For example, Career Institute, Inc., a subsidiary of Grolier, Inc., owns five "schools"--American School of Photography, Chicago School of Interior Decoration, National Photo Coloring School, National School of Dress Design, and Stenospeed Shorthand.

[7] Fowler, "The Role of Home Study Today," National Home Study Council, Exhibit F-43; "Training by Mail," Department of Labor, (hereinafter DOL) *Manpower Magazine* (March 1970), Exhibit F-44.

While residential schools follow a more conventional classroom format, there are differences in the manner in which the instruction is organized. Some residential schools will operate courses with fixed starting and finishing dates while others will have "open" enrollments which allow consumers to enroll at more frequent intervals. The fixed residential format has precise matriculation and graduation dates and students enroll as a group (or class) and graduate as a group. Residential schools without such a format generally allow students to proceed at their own pace so that different students may be at different levels of achievement at any given time. Thus, in the non-fixed class scheme, students need not graduate at the same time, but rather are freer to complete their courses at different times.[9]

Moreover, certain schools--particularly flight schools and cosmetology schools--have programs that are divided into two portions. The first segment generally involves academic instruction and the second includes clinical experience, practical training, or on-the-job instruction.[10]

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[8] Id. The ability of these instructors to provide individualized attention is the subject of some doubt. In her article, "Let Us Now Appraise Famous Writers", Jessica Mitford notes that if all the students enrolled in the home study course given by Famous Writers School (FWS) were to submit the required eight lessons per year, FWS' fifty-five instructors would have to analyze, grade and comment upon 500,000 lessons a year--or one lesson every few minutes. Reprinted in Educational Benefits Available for Returning Vietnam Era Veterans, Hearings before the Subcommittee on Readjustment, Education, and Employment of the Senate Committee on Veterans' Affairs (1972), Part 2, p. 1033 et seq., Exhibit A-14.

[9] See Initial Comments of the Association of Independent Colleges and Schools, pp. 51-52, Exhibit K-867; catalog of Whiting College, 1973-74, a residential school accredited by the Association of Independent Colleges and Schools, Exhibit E-98; testimony of C. Mohling, Curriculum Director, Merritt-Davis Business College, Tr. 4786, 4808-09; testimony of R. Colborn, representing Colburn Academy of Beauty Culture, Tr. 6649.

[10] See Letter from J. Taylor, Executive Director, Cosmetology Accrediting Commission (August 21, 1972), enclosing Accreditation Purposes, Procedures, and Standards, Exhibit F-55; testimony of M. Raskin, representing IBA Prestige Beauty Colleges, Tr. 6627-28; testimony of K. Renner, President, National Association of Cosmetology Schools, Tr. 6569, and attachments to the prepared remarks or K. Renner, Exhibit L-86; testimony of L. Burian, Vice President of Industry Affairs, National Air

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1. Types and Number of Schools

Home study schools teach a wide variety of courses and are, therefore, not easy to subdivide further.[11] Most residential schools can generally be grouped into four generic categories: trade and technical, business office and secretarial, flight, and cosmetology. The total number of schools in each category is approximately as follows: trade and technical schools, 1,400; business office and secretarial, 1,200; flight, 1,500 and cosmetology, 2,400.[12]

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10 (Continued)

Transportation Association, Tr. 2926, and attachments to prepared remarks of L. Burian, Exhibit L-28; Department of Transportation, Federal Aviation Administration, Advisory Circular Checklist and Status of Regulations, 39 Fed. Reg. 13836 (April 17, 1974), Exhibit H-86 and Pilot Schools, 39 Fed. Reg. 20146 (June 6, 1974), Exhibit H-86.

[11] The National Home Study Council estimates that correspondence schools offer courses in 300 different subject matter areas. Comments of the National Home Study Council, p. 4, Exhibit K-439. However, enrollments tend to concentrate in a few popular courses. The Veterans' Administration's statistics on veterans' participation in home study courses for one year show that 285,000 veterans, or 66 percent of all home study enrollments, were concentrated in six courses. The figures were as follows:

Electronic technicians	34,500
Air conditioning	41,600
Electrical trades	17,100
Electronic mechanics and repairmen	106,500
Automobile mechanics and repairmen	68,300
Heavy equipment operators	17,800

Veteran Participation in Correspondence Courses in Schools Other than College, Fiscal Year 1974, attachment to letter of O. Vaughn, Chief Benefits Director, Veterans' Administration, (September 24, 1974), Exhibit H-149.

[12] Schools with Occupational Programs, p. 4, Exhibit H-237. There are approximately 1,500 miscellaneous schools that do not fit neatly into these categories.

The four categories of residential schools are broad groupings that include a number of different types of programs.[13] Trade and technical schools offer a variety of courses that include training in mechanical skills, broadcasting, medical and dental assisting, electronics, drafting, welding, truck driving and heavy equipment operating, data processing, and travel.[14] Business office and secretarial schools encompass programs in secretarial skills, bookkeeping, accounting, data processing, and fashion merchandising and modeling.[15] Cosmetology schools offer instruction in beauty treatment, barbering, hair beautification, and complexion care.[16] Flight schools provide courses that are aimed at qualifying individuals to obtain various types of pilot licenses, as well as training in mechanical skills applied in the aviation field.[17]

2. Accreditation, Approval and Licensure

Another characteristic of schools themselves that is pertinent to the Commission's activity in the proprietary school field is the number of schools that are either accredited by private associations or approved by state agencies.[18] Accredited schools are a minority of all proprietary schools. There are approximately 1500 accredited proprietary vocational schools in the United States today.[19] These schools are members of one of four national accrediting associations whose makeup closely tracks the types of schools briefly outlined above. The number of accredited schools in each major proprietary school accrediting organization is approximately as follows:[20]

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[13] Categorization of schools along the lines set out here can be found in Vocational Education, Directory of Postsecondary Schools with Occupational Programs, 1971, Public and Private, Health, Education and Welfare (hereafter HEW), National Center for Education and Statistics, Exhibit F-1.

[14] See, e.g., Directory of Schools Accredited by the National Association of Trade and Technical Schools, 1972-1973, document 2, Exhibit F-12.

[15] See, e.g., Directory of Accredited Institutions, 1974, Accrediting Commission of the Association of Independent Colleges and Schools, document 2, Exhibit F-2.

[16] See, e.g., Directory of Accredited Cosmetology Schools, 1973, Cosmetology Accrediting Commission, Exhibit F-7.

[17] See Department of Transportation, Federal Aviation Agency (hereafter FAA), advisory circular and regulations for pilot schools, Exhibit H-86.

[18] A more extensive discussion of the accrediting and approval process is provided in Part I, Sections VIII-C and D. In brief, only accredited schools can participate in certain federal funding programs and veterans can receive reimbursement for training only if they attend approved schools.

Association of Independent Colleges and Schools (AICS), business office and secretarial programs[21]	484
National Association of Trade and Technical Schools (NATTS), trade and technical schools	400
Cosmetology Accrediting Commission (CAC), cosmetology schools	642
National Home Study Council (NHSC), all types of correspondence courses[22]	70

The majority of all vocational schools licensed to operate in the individual states have received some form of approval for participation in the Veterans' Benefits Program. One recent study concluded that 5000 proprietary occupational schools were approved for veterans' training.[23] Thus, about two-thirds of all proprietary schools are eligible to enroll veterans under the congressionally authorized program that reimburses veterans for such training.[24]

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[19] See testimony of P. Muirhead, Deputy Commissioner of Post-secondary Education, HEW, in Federal Higher Education Programs Institutional Eligibility Hearings before the Special Subcommittee on Education, Committee on Education and Labor, U.S. House (July 1974), pp. 21-22, Exhibit H-188.

[20] Schools with Occupational Programs, p. 8, Appendix A-4, Exhibit H-237.

[21] See initial comments of the Association of Independent Colleges and Schools, p. 1, Exhibit K-867.

[22] See comments of the National Home Study Council, p. 1, Exhibit K-439. Again, there are numerical differences depending on whether one counts individual ownerships or separate programs.

[23] Final Report on Educational Assistance to Veterans: A Comparative Study of Three G. I. Bills, Education Testing Service (September 10, 1973), p. 272, Exhibit A-4.

[24] 38 U.S.C. Chapters 34, 35, and 36. Additional discussion of the Veterans' Benefits Program appears in Part I, Section VIII-C(1), of this Report.

Related to accreditation and approval for federal programs is the concept of licensure at the state level. In the majority of states, a school must obtain a license in order to establish a facility and begin enrolling students. As discussed in greater detail below, the prerequisites to licensure vary widely from state to state, with different norms established for facilities, instructional personnel, equipment, enrollment practices, student qualifications, disclosures, refund policies, and reissuing of licenses.[25]

It should be emphasized, however, that licensure does not ensure quality performance by each individual school. Indeed, schools in some states may obtain permission to operate without undergoing complete or thorough inquiry under the applicable state law. For example, California allows the issuance of a temporary permit to operate simply upon a school's filing of the pertinent application forms.[26] Such a school may continue to operate indefinitely on a temporary approval basis even though the accuracy of its application has not been verified by inspectors of California's Bureau of School Approvals.[27] Indeed, the school may operate on a temporary approval and then subsequently have its formal application denied.[28]

3. Size of Schools - Enrollments and Revenues

Evidence on the record indicates that proprietary vocational schools form a fairly substantial industry in terms of both revenues and enrollments. It is estimated that proprietary schools enroll over two million students a year in their various programs, and that almost 66 percent of these are enrolled in accredited schools.[29] Enrollments in correspondence schools accredited by NHSC approach one million students a year, and annual enrollments in residential schools accredited by AICS and NATTS exceed 200,000 and 150,000 respectively.[30] An additional 113,000 students attend cosmetology schools and 75,000 students attend flight schools.[31] These student/consumers paid $1.7 billion for their courses in 1972, $2.5 billion in 1973, and it is projected that annual revenues will exceed $5 billion by 1985.[32]

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[25] See Part I, Section VIII-B(1), infra.

[26] See materials filed under California State Laws, Rules and Regulations Affecting Proprietary Vocational Schools and Their Salesmen, Exhibit G-1.

[27] Testimony of O. D. Russell, Associate State Superintendent of Public Instruction and Chief of the Division of Financial Resources and Distribution of Aid, State Department of Education, California, Tr. 4305.

[28] Id., Tr. 4312-14. See also testimony of T. Bogetich, Executive Director of the California Advisory Council on Vocational Education, Tr. 4025, 4040.

[29] Alden, p. 3-4, Exhibit H-30. A. Harvey Belitsky estimated that 7,000 proprietary schools had approximately 1.5 million students in 1970, Exhibit A-8. This figure reflects the rapid growth in enrollments in proprietary schools since (Continued)

Schools vary widely in size. The Association of Independent Colleges and Schools noted that the average enrollment of its member schools was 200 students.[33] The National Association of Trade and Technical Schools states that 33 percent of its members grossed less than $150,000 per year.[34] The most comprehensive study of school sizes was conducted by the National Center for Education Statistics[35] which found that: 64 percent of flight

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[29] (Continued)

the advent of federal subsidies in 1968-69. The Stanford Research Institute projects a five percent annual growth rate in proprietary school enrollments will yield over six million enrolled students by 1985. See Private Occupational Schools, p. 2, Exhibit A-35; see also Bond, Postsecondary Education in Accredited Private Vocational Schools, Indiana University (1974), p. 3, Exhibit C-167.

[30] See comments of the National Home Study Council, p. 13, Exhibit K-439; initial comments of the Association of Independent Colleges and Schools, pp. 1-2, Exhibit K-867; annual reports of the Association of Independent Colleges and Schools, Exhibit B-31; annual report of the National Association of Trade and Technical Schools, Exhibit B-30; annual reports of the National Home Study Council, Exhibit B-29; materials submitted to accompany the testimony of J. Brown, President of the National Home Study Council, Exhibit L-131; John Alden, "Federal Involvement in Post-Secondary Proprietary Vocational Schools," p. 3, Exhibit H-30.

[31] See Schools with Occupational Programs, pp. 21-22, Exhibit H-237.

[32] Stanford Research Institute, Private Occupational Schools, p. 2, Exhibit A-35; John Alden, p. 4, Exhibit H-30; see also A Context for Policy Research in Financing Postsecondary Education, A Staff Report, National Commission on Financing Postsecondary Education (June 1974), p. 68, Exhibit H-157.

[33] Initial Comments of the Association of Independent Colleges and Schools, p. 2, Exhibit K-867.

[34] Comments of the National Association of Trade and Technical Schools, p. 3, Exhibit K-520.

[35] Schools with Occupational Programs, Exhibit H-237.

and cosmetology schools had enrollments of 50 students or less, while 97 percent had enrollments of 250 or less; 26 percent of trade, technical and vocational-technical schools had enrollments of 50 students or less, while 73 percent had enrollments of 250 or less; and 15 percent of business-office-secretarial schools had 50 students or less, while 65 percent had 250 or less.[36]

However, this does not mean that large schools do not predominate in this industry. Particularly in the home study field, where most schools are larger, major schools have a large share of the market. More than half of all home study schools have enrollments larger than 500 students,[37] and a number of large home study schools enroll tens of thousands of students each year.[38] The ten largest home study schools enroll approximately 75 percent of the one million students attending accredited schools of this type.[39]

Moreover, residential schools also have members with large enrollments. The National Center for Education Statistics found that 115 trade, vocational-technical, and technical schools had enrollments in excess of 500 students, while in the business-office-secretarial school field 166 schools had enrollments over 500.[40] Other evidence on the record bears out the conclusion that a minority of all schools enroll a substantial proportion of all students.[41] Thus, while the residential sector is not dominated by a few large schools as in the home study field, both sectors show the same tendency for a small percentage of schools to have a relatively large percentage of enrollees. Among both AICS and NATTS accredited schools, ten large schools had combined enrollments of over 20,000 per year.[42]

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[36] Id., Wellford W. Wilms, "Proprietary and Public Vocational School Students", Eric (March 1974), Appendix, Exhibit A-2. In his comparative study of proprietary schools and community colleges, Wilms found that enrollments at proprietary residential schools averaged approximately 291 students. Wilford W. Wilms, note 2, supra, p. 21, Exhibit C-110. The National Commission on the Financing of Postsecondary Education, hereafter NCFPE, reported that its own survey of proprietary residential schools showed that 50 percent of such schools had enrollemts of 50 students or less. See A Context for Policy Research in Financing Postsecondary Education, A Staff Report, NCFPE, p. 69-71, Exhibit H-157. The difference in results can be accounted for by methodological differences in the two surveys. In particular, the Carnegie Commission confined its results to trade, technical, business and specialized schools while NCFPE also included within its purview cosmetology and flight schools.

[37] Schools with Occupational Programs, p. 3, Exhibit H-237.

[38] Annual Reports of Schools, National Home Study Council, Exhibit B-29.

[39] Id.

[40] Schools with Occupational Programs, Appendix A-2, Exhibit H-237.

More importantly, looking at individual schools often masks the fact that major corporations own and operate groups or chains of schools. The Stanford Research Institute identified an increasing trend toward multiple-school operations and acquisitions by large corporations who bought out groups of schools that were formerly independent operations and who now operate these schools through centralized corporate programs.[43] For example, Control Data Corporation's residential schools had cumulative new annual enrollments of approximately 5,500, Electronic Computer Programming Institute's new enrollments were 4,200, Bell & Howell's DeVry Institutes and other affiliated residential schools had enrollments of 11,000, formerly affiliated Draughon Schools had new enrollments of 9,300, and ITT's technical institutes had new enrollments of 3,000.[44]

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[41] See Annual Reports, National Association of Trade and Technical Schools, Exhibit B-30; Annual Reports, Association of Independent Colleges and Schools, Exhibit B-30.

[42] Id.

[43] Private Occupational Schools, pp. 2-3, Exhibit H-30. The Stanford Research Institute identified the following major corporations involved in proprietary school training: Bell & Howell Co.; Career Academy; Columbia Broadcasting Systems; Clasco; Coleman American Companies; Control Data Corporation; Elba Systems; Elkins Institute; FAS International; General Educational Services Corporation; Intext; International Telephone and Telegraph Corporation; Lear Siegler; Ling-Tempco-Vought Corporation; Crowell, Collier, MacMillan; Marcor; McGraw-Hill; National Systems Corporation; Ryder Systems; and United States Industries.

The American Institute for Research (AIR), in its own survey of selected proprietary schools, found a similar tendency away from single business ownerships and found a clustering of schools in the franchise, corporate subsidiary, and chain school categories. See A Comparative Study of Proprietary and Non-Proprietary Vocational Training Programs, AIR (November 1972), pp. 37-38, Exhibit A-3.

[44] See Annual Reports of the National Association of Trade and Technical Schools, Exhibit B-30; Annual Reports of the Association of Independent Colleges and Schools, Exhibit B-31;

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4. Course Offerings - Number, Length and Cost

Another attribute that distinguishes proprietary vocational schools is the type of courses they offer. It has been estimated that these shools offer over 13,000 courses.[45] However, these are not distinct types of training and the figure represents many duplicative offerings--the National Center for Education statistics (NCES) found that nearly 55 percent of the schools offered at least one of the 10 most popular programs and that there were approximatey 170 truly distinct types of offerings.[46] Additional data for home study schools reflect the same phenomenon. As mentioned previously, while accredited home study schools offer over 300 distinct types of courses, the vast majority of students participate in a few course offerings.[47]

The length of courses also varies widely among types of schools, depending on the degree of technical training involved and the type of program being offered. The average course length for residential, non-public schools has been calculated at nine months, ranging from residential programs in flight training (six months) and cosmetology courses (seven months) to courses in hospital and health related areas (16 months).[48] Another

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and comments of Bell & Howell Schools, Inc., Exhibit K-856. In another instance of this phenomenon, the Commission's complaint and order against Fuqua Industries, Docket No. C-2626 showed that the corporation had purchased and operated over 300 schools in 36 states and the District of Columbia. Although the schools operated under different names, the corporation set uniform policy for all schools in the chain.

[45] Schools with Occupational Programs, p. 12, Exhibit H-237.

[46] Id. at p. 12; "Evaluation of the MDTA Institutional Individual Referral Program", Olympus Research Corp. (June 1972), Appendix, Exhibit A-7. The ten most frequent course offerings were: cosmetology, commercial pilot, nursing, secretary/stenographer, auto mechanics and repairperson, accounting/bookkeeping, clerical, typing, data processing, and radiologic technology.

[47] See discussion at footnote 11 supra.

[48] Schools with Occupational Programs, pp. 17-18, "Evaluation of the MDTA Institutional Individual Referral Program", Olympus Research Corp. (June 1972), Appendix, Exhibit A-7. Additional data are derived from Evelyn R. Kay, National Center for Education Statistics. The National Commission on the Financing of Postsecondary Education's own survey yielded substantially similar results. Their findings show an average course length of 12 months in both the trade and technical schools category and in the business, flight, and cosmetology school categories.
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study of proprietary schools yielded substantially similar results and concluded that proprietary residential school programs averaged nine months in length.[49] State publications and directories listing proprietary school course offerings confirm those estimates of average course length.[50]

Of course, some schools do have programs of much greater length. For example, some accredited schools which are members of the Association of Independent Colleges and Schools have programs that run two and four years in length.[51] Moreover, some proprietary schools are authorized by state law to grant degrees that are the equivalent of two year degrees offered by public junior and community colleges.[52]

Equivalent data for home study schools are much more difficult to evaluate. By definition, correspondence study allows the student to proceed at his own pace and the length of time a student may take to complete a course is often dictated by the student's own needs. Schools often try to encourage the

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See A Context for Policy Research in Financing Postsecondary Education, A Staff Report, NCFSE (1974), pp. 79, 81, Exhibit H-157.

[49] Wellford W. Wilms, "The Effectiveness of Public and Proprietary Occupational Training", pp. 21, 27, Exhibit C-110. The American Institute for Research also found wide fluctuations in course length depending on the degree of technical difficulty involved in the course. For example, AIR found that 90 percent of computer related courses were 36 weeks in length or less; that courses in health fields were evenly split between 20-week and 36-week offerings; and that 80 percent of electronics and other related offerings were 36 weeks or longer. See A Comparative Study of Proprietary and Non-Proprietary Vocational Training Programs, AIR (November 1972), p. 55, Appendix 2, Exhibit A-3.

[50] See A Guide to Specialized Training Institutions in Pennsylvania, Pennsylvania Department of Education (1971), Exhibit C-181, and Ohio Higher Education Notebook, Ohio Department of Education (1973), Exhibit C-152.

[51] Initial Comments of the Association of the Independent Colleges and Schools, p. 2, Exhibit K-867; see also Robert Allen and Thomas E. Gutteridge, The Career Profiles of Business Majors from Two-Year Public and Proprietary Colleges, State University of New York at Buffalo, Exhibit C-166.

[52] Testimony of M. Lazoff, Interboro Institute, Tr. 8349, 8354-58, and attachments thereto, Exhibit L-115; testimony of R. Fulton, Executive Director, Association of Independent Colleges and Schools, Tr. 6990.

student to proceed at a fairly uniform pace in returning lessons and set limits on the length of time during which some lessons must be received in order to avoid removal from the course.[53] Thus, in assessing data on course length, a distinction must be drawn between the time a school estimates a student can complete a course and the actual time taken by the student to complete it.[54]

With this caveat in mind, the available evidence indicates that correspondence courses, on the average, take one year to complete. The National Center for Education Statistics (NCES) found that correspondence courses took approximately 14 months to complete.[55] The National Commission on the Financing of Postsecondary Education estimated 10 months as the average completion time.[56]

Finally, the cost of proprietary school courses is an important element in the industry's profile. The National Center for Education Statistics determined that the average tuition cost for residential private schools was $1,400 in 1973-74.[57] However, as with other attributes of these schools, course costs vary depending upon the length of the course and the type of training offered. Thus, NCES's data show that cosmetology schools are the least expensive ($460 average tuition), business schools and trade schools are moderately expensive ($1,300 and $940 respectively), and flight schools are the most expensive ($2,590).[58]

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[53] See, e.g., testimony of C. Chase, representing Advance Schools, Inc., Tr. 8814. See also submission of the American School to the Ohio Department of Education in Ohio Higher Education Notebook, pp. 307-379, Exhibit C-152.

[54] As one might expect, most home study schools estimate the length of a course in the number of lessons to be completed rather than the length of time it takes to complete these lessons. See Ohio Higher Education Notebook, pp. 307-379, Exhibit C-152.

[55] Schools with Occupational Programs, p. 17, Exhibit H-237.

[56] A Context for Policy Research in Financing Postsecondary Education, A Staff Report, p. 83, Exhibit H-157.

[57] Schools with Occupational Programs, p. 19, Exhibit H-237.

[58] Id., Table 9, p. 20, Exhibit H-237. NCES's complete findings showed total charges by each school type to be as follows:

Vocational/Technical	$1,476
Technical Institute	2,197

(Continued)

Other studies seem to bear out these findings by NCES. The American Institute for Research concluded that approximately half of the technical and health courses surveyed cost $1,500 or more and 40 percent of the computer courses were $1,500 or more.[59] The National Commission on the Financing of Postsecondary Education's (NCFPE) own review of vocational schools found that in 1972 proprietary trade and technical schools had average charges of $1,233 while business, cosmetology, flight, and hospital schools averaged $1,218 in total cost.[60] Finally, in the most recent study of proprietary schools, Wellford Wilms concluded that average costs by program were as follows: accounting, $2,930; computer programming, $2,340; electronic technical, $3,020; dental assisting, $1,060; secretarial, $2,380; and cosmetology, $410.[61]

Cost data on home study schools shows the same type of wide fluctuations in charges for individual courses. The National Commission on Financing Postsecondary Education concluded that the average home study program in 1972 cost $470.[62] Similarly, 1973 data from the National Center for Education Statistics found an

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58 (Continued)

Business/Office	1,361
Cosmetology/Barber	463
Flight	2,590
Trade	940
Hospital	1,100

[59] A Comparative Study of Proprietary and Non-Proprietary Vocational Training Programs, pp. 56-57, Appendix R, Exhibit A-3.

[60] A Context for Policy Research in Financing Postsecondary Education, A Staff Report, pp. 82-84, Exhibit H-157. NCFPE also quotes the Carnegie Commission's finding that average residential school charges were $1,100. Id. at p. 84.

[61] Wellford W. Wilms, The Effectiveness of Public and Proprietary Occupational Training, pp. 179-181, Exhibit C-110.

[62] A Context for Policy Research in Financing Postsecondary Education, A Staff Report, p. 83, Exhibit H-157.

average charge of $570.[63] One state listing of course costs showed charges clustering in the $600-700 range in 1972-1973.[64]

All these figures on home study costs are accumulations of numerous types of courses, many of which are low-cost hobby courses. More recent data demonstrate that costs for longer courses which are largely vocational in intention can be quite substantial. One large home study school reported its course offerings to cost in the $1,375 - $1,795 range in 1975.[65] Another large home study school had course prices ranging from $295 to $1,795 in 1975 with an average course price of $940.[66] Both schools enroll large numbers of students in programs that are vocational in purpose.[67]

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[63] "Evaluation of the MDTA Institutional Individual Referral Program", Olympus Research Corp. (June 1972), Exhibit A-7; Schools with Occupational Programs, p. 20, Appendix A-7, Exhibit H-237.

The most recent data on home study schools show that veterans paid an average of $728 for home study courses. However, the prices varied widely. Some schools (e.g., Bell & Howell Schools) charged $1131 for their course, while CIE, Inc.'s courses had an average course cost of $369. See Training by Correspondence Under the G.I. Bill, Office of the Comptroller, VA (June 1976), pp. 25, 29.

[64] Ohio Higher Education Notebook, pp. 309-379, Exhibit C-152.

[65] Comments of Bell & Howell Schools, Inc., Exhibit K-856.

[66] Attachments to the testimony of G.O. Allen, President, Cleveland Institute of Electronics, Field Policy Manual, Exhibit L-119.

[67] See enrollment figures in annual reports of the NHSC, Exhibit B-29, and statement of course purpose in Self-Evaluation Reports of the National Home Study Council, Exhibit F-64.

III. The Profile of Students Attending Proprietary Vocational Schools

A. Introduction

In evaluating advertising, sales and enrollment techniques, and the consumer safeguards necessary to protect the proprietary vocational school purchase decision, it is critically important to keep in mind the type of consumer who enrolls in these courses. This section will analyze the "typical" vocational school enrollee and consider if this consumer is particularly vulnerable to unfair and deceptive practices and in need of remedial relief.[1]

While industry members have challenged the feasibility of a "typical" student concept,[2] the evidence demonstrates a high degree of similarity among many students who take proprietary school courses. It is therefore useful to employ the concept in this analysis. Deviations from this "typical" student will also be described along with the implications of such variations.

Student characteristics to be analyzed are age, educational background, race, income, job experience, and related demographic attributes. Also discussed will be the reasons these individuals enroll, how they finance their proprietary vocational school education, and what assistance and sources of information they utilize in making their enrollment decision.

This section will then turn to the implication these student characteristics have for the lack of sophistication and vulnerability of students not only when faced with unfair and deceptive advertising and enrollment techniques but when confronted with a serious purchase decision that has long-term career implications. It will be seen that the potential for these practices to be misleading and unfair to such an audience is far greater than when dealing with older, more educated and sophisticated consumers.

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[1] This section's prime concern will be for those students who are affected by the Rule. Thus staff will focus on those individuals who make a purchase decision to enroll in a particular vocational course covered by the Rule. Of less concern are individuals who are enrolled by their employer, through a state agency, or by other organizations. See discussion at Part II, Section IV-F, infra.

[2] Testimony of Leonard Singer, President of Technical Home Study Schools, Little Falls, New Jersey, Tr. 1218; testimony of John Miller, President of Belsaw Institute, Kansas City, Missouri, Tr. 1765; testimony of Lois Stuart, President of Writer's Institute, Mamaroneck, New York, Tr. 183[illegible]; testimony of J. Theobald, Executive Vice-President, New York Institute of Technology, Tr. 1398; testimony of D. Keyes, Dean of the Academy of Advanced Traffic, Tr. 1565; testimony of W.L. Wright, President, American School of Correspondence, Chicago, Tr. 7311; testimony of Robert A. Barton, President, LaSalle Extension University, Tr. 8052.

B. Age

As a general rule, enrollees of proprietary vocational schools are young. This is particularly true of students at residential schools. A number of industry-wide studies have found that the average enrollee is approximately twenty years of age.[3]

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[3] One study sampled students from 51 private residence schools selected from four broad occupational areas and from four metropolitan areas. It found that 47 percent were 19 or under and that 80 percent were 24 or under. A Comparative Study of Proprietary and Non-Proprietary Vocational Training Programs, American Institutes for Research in the Behavioral Sciences, Palo Alto, Calif. (November 1972), p. N-16, Exhibit A-3.

Another study, that of the National Commission on the Financing of Postsecondary Education (NCFPE), found that 62 percent of private vocational school students were under 21. This result was reached by obtaining information directly from 9,491 private schools (not including collegiate or correspondence schools), A Context for Policy Research in Financing Postsecondary Education, A Staff Report, The National Commission on the Financing of Postsecondary Education (June 1974), p. 126, Exhibit H-157.

A third researcher, Wellford W. Wilms, arrived at a median age of 20 after sampling day and night session students from 33 proprietary resident schools in six different occupational areas and in four different cities. Wellford W. Wilms, The Effectiveness of Public and Proprietary Occupational Training, Center for Research and Development in Higher Education, University of California, Berkeley (October 31, 1974) (hereafter Wilms), p. 34, Exhibit C-110.

A fourth study found a median age of 20 for students enrolled in day sessions at member schools of the National Association of Trade and Technical Schools. In fact only 10 percent of these students were over 25. Even 60 percent of students attending night sessions were 25 or younger. A. Harvey Belitsky, Private Vocational Schools. Their Emerging Role in Post-Secondary Education (June 1970) (hereafter Belitsky), p. 13, Exhibit A-8.

While students at night sessions tend to be somewhat older, such students account for only about 14 percent of residential proprietary vocational students. See AIR, p. N-1, Exhibit A-3.

Another source demonstrates a similar finding even though the sample has an important bias. Bureau of Census data demonstrates a median age of slightly over 21 years for students at proprietary resident vocational schools. But this sample is based on individual respondents' evaluations of their educational activity. Staff believes that many individuals in employer-sponsored

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These national surveys parallel data that individual residence schools have submitted to the public record.[4] For example, Bell & Howell Schools found that 79 percent of its over 10,000 resident school students were between 18 and 21 years old.[5]

Correspondence students, on the other hand, tend to be drawn from a somewhat broader age spectrum. It is a little more difficult to get a precise view of the age distribution of correspondence students because the few nationwide studies in the area are outdated[6] or inaccurate.[7]

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[3] (Continued)

programs or similar courses not covered by the Rule may be included in this sample--individuals who tend to be older than other students. See Bureau of Census, Current Population Reports, p. 20, No. 281, "Income and Expenses of Students Enrolled in Postsecondary Schools: October 1973", unpublished Bureau data, Exhibit A-109.

[4] Testimony of R. Knutson, President of Education Management Corp., Tr. 2001; testimony of D. Dorian, Administrator, Mansfield Beauty Academy, Tr. 377; testimony of A. Marcus, President, Laboratory Institute of Merchandising, Tr. 1749; testimony of D. Keyes, Dean of the Academy of Advanced Traffic, Tr. 1565; testimony of A. Edelman, former director, private business school, Tr. 1606; testimony of P. Drace, Administrative Director of Virginia Farrell, Inc., Tr. 2101.

[5] Comments of Bell & Howell Schools, Inc. (hereafter B&H Comment), p. 13, Exhibit K-856.

[6] One study bases its data from a 1956 study: Homer Kempfer, Private Home Study Schools in Illinois, Advisory Council on Vocational Education (June 1973), Exhibit A-55.

A 1968 study relies on even earlier surveys for its findings. MacKenzie, Ossian, Rigby, Correspondence Instruction in the U.S., McGraw-Hill (1968), pp. 88-101, Exhibit A-3.

[7] The Bureau of Census materials are virtually useless in the home study area, since they estimate home study enrollment at 108,000. See Bureau of Census, Exhibit A-109. The most recent NHSC figures put active NHSC enrollment at over 950,000 which does not include unaccredited home study school enrollments. See the submission to accompany the testimony of J. O. Brown, President, NHSC (hereafter NHSC Statistics), Exhibit L-131.

A survey submitted by the National Home Study Council (exhibit to accompany the testimony of W. Fowler, NHSC, Exhibit L-123) may be just as defective as the Census materials for a number of reasons. The study does not randomly sample schools. Moreover, the number of students sampled from each school is not proportionate to the

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However, there are data on the record from which the following judgments as to the age of correspondence school students can be made. Most non-veterans are enrolled by their early or mid-twenties.[8] Veterans show the opposite pattern; only about 30 percent are under 25,[9] with the average age being about 30.[10] Veterans comprise about 40 percent of home study enrollments,[11] demonstrating that this population of older students is a significant one.

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[7] (Continued)

school's size. For example, the responses of the students at a school with 500 enrollments has the same weight in this "industry-wide survey" as the student responses at a school with 50,000 enrolled. In addition, the response rate was so low that the statistical reliability is open to question. For these reasons and others the survey is severely biased in favor of mail enrollments and underplays those through commissioned sales representatives. Just as importantly, the results are skewed toward graduates and significantly underreport drop-outs.

[8] LaSalle Extension University, one of the largest home study schools and also a school that enrolls only about 15 percent veterans, surveyed a sample of active students and found, after excluding high school equivalency courses (where the students enrolled tend to be quite young), that a quarter of the students were 22 or under, that 23 was the mode and 27 the median age. Of course, this is based on the age of the students in the sample when they responded to the questionnaire. Since students remain enrolled in home study courses for up to one, two or even more years, the age at enrollment for these students was somewhat less. If all veterans were excluded from the survey, the age statistics should also drop even more. (Submission to accompany the testimony of Robert A. Barton, Exhibit L-112.)

A Bell & Howell survey of students of its correspondence school, also one of the largest, found the mean age of non-veterans to be 24 with about 60 percent, 25 or under. "B&H Comment", Appendix II, item 2, Exhibit K-856.

[9] Final Report on Educational Assistance to Veterans: A Comparative Study of Three G.I. Bills, submitted to the Committee on Veterans' Affairs, U. S. Senate, September 20, 1973, Exhibit A-4.

[10] "B&H Comment", Exhibit K-856. Of course, this is to be expected. Since veterans' entitlements to receive federal monies to take home study courses must occur after their tour of duty, most veteran enrollees will have several years of post-high school military experience before they enroll. For an explanation of the G.I. Bill, see Part I, Section VIII-C(1) infra.

[11] "NHSC Statistics", Exhibit L-131.

C. Education and Race

The "typical" vocational student enrolled both at proprietary resident and home study schools is a high school graduate, usually from a vocational or general program, rather than a college-preparatory program.[12] Approximately 20 percent of non-veteran correspondence school enrollees are high school drop-outs while about 10 percent of veterans and residence school enrollees did not finish high school.[13] Many students of residence and home study schools have attempted some form of postsecondary education, but the majority of them did not finish the programs in which enrolled.[14] Resident students, in particular, tend to have

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[12] Wellford W. Wilms found in his national survey of residence schools that about 52 percent of the students had high school degrees in college preparatory programs, nine percent were high school drop-outs and nine percent had higher degrees. "Wilms", p. 37, Exhibit C-110.

The AIR study found that 80 percent of the students surveyed only had a high school education, 11 percent were high school drop-outs, four percent had finished a four year college and five percent a two year college, and that less than half had been in an academic high school program. AIR, p. N-12, Exhibit A-3. Bell & Howell reports that 81 percent of its resident school students completed high school, 11 percent finished 13 or 14 grades, and only two percent had 15 or more grades of schooling. Only 35 percent graduated from high school with a college preparatory diploma. "B&H Comment", at Appendix II, item 1, tables 11, 16, Exhibit K-856.

LaSalle found that 17 percent of its students were high school drop-outs and 11 percent had completed four years of college. "LaSalle Exhibit", schedule C, Exhibit L-112.

McGraw-Hill found that 15 percent of its graduates from National Radio Institute did not finish high school, with another 47 percent not involved in any other schooling since high school. See comments of the National Radio Institute, a subdivision of McGraw-Hill, Inc. (hereafter NRI Comment), Exhibit K-900.

[13] See note 12 supra.

[14] The AIR study found that while 21 percent went on to a two-year college, only five percent finished, and that while 16 percent went to a four-year college, only 4 percent finished. Similarly, most did not finish correspondence courses, apprenticeship programs, trade, technical or business schools they may have attended. AIR, p. N-12, Exhibit A-3.

Bell & Howell found that 28 percent of its correspondence students attended but did not finish college. "B&H Comment", Appendix II, item 2, schedule C, Exhibit K-856.

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completed high school only shortly before enrolling in their proprietary school courses.[15]

Proprietary vocational school students frequently come from families of limited educational attainment. The students, despite their own marginal education background, generally have more education than their parents.[16]

About 20 percent of proprietary students are black or from other minority ethnic groups.[17]

D. Work Background and Income

Most residence school students have little or no full-time work background before enrolling.[18] In addition, if they did work, their incomes were very low, indicating employment in low-level jobs barely paying the minimum wage.[19] The picture is similar for non-veteran correspondence students. While they

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[14] (Continued)

LaSalle found 20 percent of its students had some further schooling but not a college degree, "LaSalle Exhibit", Schedule C, Exhibit L-112.

[15] One study found that one-third of resident school enrollees had just completed high school within the year preceding their enrollment. AIR, p. N-13, Exhibit A-3.

[16] One nationwide study found that less than 10 percent of private vocational school students' parents had college degrees and that more than 32 percent had not completed high school. AIR, p. N-16, Exhibit A-3.

Bell & Howell reported that for the 10,000 students at its residence courses, about a third of their parents were high school drop-outs and under 15 percent college graduates. "B&H Comment", tables 26 and 27, Exhibit K-856.

[17] "NCFPE", p. 127, Exhibit H-157.

[18] Only 42 percent were employed full-time before enrolling; and 75 percent had never worked full-time for pay for as many as two years. AIR, p. N-13, Exhibit A-3.

[19] The AIR study found that of students enrolled in proprietary resident vocational schools, only 13 percent of the students were earning more than $500 a month and six percent were earning more than $700 a month before beginning present studies.

generally are employed, their incomes are low.[20] Veterans are more likely to be employed and making a somewhat better salary than their non-veteran counterparts.[21]

Not only students' earned income, but also their family income is low. Substantial numbers of students have household incomes that are at the poverty level.[22]

E. Reasons for Enrollment

Virtually all private residential school students enroll to get new or better jobs. While this conclusion would appear to be obvious given the low level of employment or the underemployment described previously, statistical information reinforces the conclusion. This finding is supported by nationwide studies and reports,[23] by the statements on the public record of individual schools,[24] and by individual schools' statistics and reports.[25] The proposition that residential students are motivated by career objectives is not disputed by the vocational school industry.[26]

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[20] Bell & Howell reports that while 83 percent of its non-veteran enrollees in correspondence courses were employed full-time, half made less than $8,000 a year and only eight percent made $14,000 or more. "B&H Comment", Appendix II, item 2, Exhibit K-856.

[21] Id. For example, 94 percent of veterans enrolled in Bell & Howell correspondence courses are employed, with 23 percent making under $8,000 and 55 percent making $14,000 or more.

[22] The NCFPE found from its sample of residence schools that about 28 percent of all enrollments were from families whose income was less than $5,000. While this sample included both public and proprietary schools, 9,491 of the 10,399 schools are prroprietary. "NCFPE", pp. 126, 128, Exhibit H-157.

Census data, which staff considers biased toward older, higher-income individuals (see note 3 supra) show that 20 percent of proprietary residence school students have household incomes of less than $5,000, 45 percent under $10,000, and seven percent over $25,000. "Bureau of Census", Exhibit A-109.

[23] The AIR study found that for 71 percent of the students, their most important goal was to find a job or to change jobs. Another eight percent said their most important goal was to be promoted or earn more money. Nine percent wanted to develop their personality or mind or make a desirable marriage. Ten percent listed "other"; of course, this does not mean that those who check these latter two categories think that obtaining a new job was not an extremely important reason for enrolling. "A Comparative Study of Proprietary and Non-Proprietary Vocational Training Programs," American Institutes for Research in the Behavioral Sciences (November 1972) p. W-1, Exhibit A-3. See also Belitsky, Exhibit A-8; Wilms, Exhibit C-110; "Some Aspects of Placement in Proprietary Schools: Its Importance (Continued)

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[23] (Continued)

and How Schools Do It," Center for the Study of Consumer Financed Education, Inc., Washington, D. C., Exhibit C-60; materials from Dr. Kenneth B. Hoyt, Professor of Education, University of Maryland, Exhibit C-71; exhibits to testimony of William Fowler, Executive Director, National Home Study Council, Exhibit L-123.

[24] See e.g., testimony of L. Stuart, President, Writer's Institute of America, Tr. 1837; testimony of J. Thompson, President, McGraw-Hill Continuing Education Center, Tr. 2071; "Directives to Administrative and Sales Personnel," Charron Williams College, Miami, Florida, 1974, Exhibit E-222; testimony of B. Simon, Director, Sanders Career Schools, Tr. 1193; testimony of D. Dorian, Administrator, Mansfield Beauty Academy, Tr. 377; testimony of J. Goss, former teacher and recruiter, Tr. 2872; testimony of J. Brennan, owner, cosmetology schools, Tr. 599; "B&H Comment," Exhibit K-856; testimony of J. Keller, attorney, United Systems, Tr. 3537.

[25] Materials from Kenneth B. Hoyt, Professor of Education, University of Maryland, Exhibit C-71; "B&H Comment," Exhibit K-856, p. 14 (85 percent of graduates requested placement assistance); DVB Circular 20-74-113, Appendix B (May 12, 1975), Exhibit H-205; AICS Self-Evaluation Reports, Examiners' Reports and Examiners' Summary Report, Exhibit C-37; NATTS Self-Evaluation Reports, Visiting Team Reports, and File Review Letters, Exhibit F-61; NATTS--photocopied material from most recent Annual Reports submitted by member schools, Exhibit B-30; comments of Control Data Institute, Exhibit K-862; Annual Report of Private Trade Schools, Business Schools and Institutes, 1972-73; Michigan Dept. of Education (September 1973), Exhibit C-15; Ohio Higher Education Notebook, Vol. II, Division of Guidance and Counseling, Ohio State Dept. of Education (January, 1973), Exhibit C-152; A Guide to Specialized Training Institutions in Pennsylvania, Division of Guidance Services, Bureau of Pupil Personnel Services, Pennsylvania Dept. of Education (1971), Exhibit C-181.

[26] The industry did argue that many graduates were not "available for placement" upon graduation. See, e.g., Brief on Behalf of National Association of Trade and Technical Schools, Exhibit K-520. But commonly this was put forth to account for those who found themselves in changed circumstances at graduation. Even if they were not immediately available for placement, generally they would be in the future and they certainly enrolled for vocational purposes.

However, in their comments on the proposed Rule, members of the home study industry did dispute whether students enroll in correspondence courses purely for vocational reasons, arguing that many entered for avocational reasons.[27]

In analyzing this issue, the important factor is how one reports veterans' motivations. Veterans who utilize their entitlement to veterans' benefits to pay for their correspondence course tuition are required by law to have a professional or vocational objective.[28] Nevertheless, in spite of the fact that schools know that veterans must have an occupational objective and know precisely how many veterans they enroll utilizing VA benefits,[29] they claim that these students enroll for avocational purposes. This is most noticeable among schools which have the most veterans enrolled.[30]

In fact, the same schools that commented to the Commission that their students enroll for avocational reasons report opposite results to the Veterans' Administration in describing surveys of their graduates.

These surveys required by federal law under the veterans' benefits program,[31] include the percentage of all graduates responding (not just veterans) who took the course for "personal enrichment, avocational or recreational" reasons.[32] Results from major correspondence schools show that a negligible number of their graduates consider avocational objectives their reason for enrolling.[33]

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[27] See, e.g., "NHSC Comment", Exhibit K-439; testimony of B. Erhlich, Legal Counsel to NHSC and NATTS, Tr. 9272; testimony of W. Fowler, Executive Director, National Home Study Council, Tr. 9049; testimony of R. Barton, President, LaSalle Extension University, Tr. 8052; testimony of R. Kislick, President and Chairperson of the Board, Intext, Inc., Tr. 6755, Tr. 1819; testimony of J. Thompson, President, Continuing Education Center of McGraw-Hill, Tr. 2071; testimony of J. Brown, President, National Home Study Council, Tr. 4921; comments of the National Home Study Council, Exhibit K-439.

[28] See discussion in Part I, Section VIII-C(1), infra.

[29] All accredited correspondence schools report this to their accrediting agency. See note 11 supra.

[30] Compare comments cited at note 27 supra with enrollment figures found in "NHSC Statistics", note 11 supra.

[31] 38 U.S.C. Sections 1673, 1723(a)(2).

[32] See Part I, Section VIII-C(1) infra.

This result differs from surveys presented to the public record in this proceeding by individual correspondence schools which purport to show large numbers of "avocational" enrollees, particularly among veterans.[34] These school surveys are misleading, however, because of the way they treat veterans' motivations,[35] the fact that graduates or long-time students are surveyed instead of all enrollees,[36] the high non-response rates,[37] the way the question is phrased, and because of individual differences in schools.[38]

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[33] Bell & Howell's survey results indicate that three percent of responding graduates took their course for recreational reasons. "B&H Comment", Appendix 2, item 4, Exhibit K-856.

CIE's results indicate five percent took their courses for avocational reasons. "CIE Exhibit", Exhibit L-119. LaSalle's results show 12 percent enrolled as a hobby. "LaSalle Exhibit", Exhibit L-112.

These results, of course, count all veterans enrolled using their VA benefits as having a vocational objective, as required by law.

These low results may even overstate the number enrolled for recreational reasons because only graduates, not drop-outs, are counted. Individuals enrolled to get a job are more likely to drop out than those who signed up for avocational reasons as shown by a LaSalle survey. That survey found that 65 percent of LaSalle's graduates enrolled to get a new job or achieve a promotion or additional skills for their present job. The same question asked of actively enrolled students drew a 78 percent job-oriented response. Note further that the survey does include early drop-outs, who by extrapolation, may have been even more likely to have enrolled to get a new job.

The discrepancy between LaSalle's VA survey results and the above quoted internal statistics can be accounted for in two ways. The LaSalle internal survey would turn up veterans who claimed to have recreational purposes. In addition, the response rate of the internal survey was much lower and thus less reliable. This may also indicate that low response rates bias a survey toward recreationally motivated students.

[34] For example, a B&H survey states that 28 percent of the veterans enrolled at its home study courses in electronics are interested in a career in electronics, 19 percent are interested in a promotion in their present job, and 45 percent said they were interested in electronics as a hobby. "B&H Comment", Exhibit K-856.

Other correspondence schools with large numbers of veterans report similar findings. See CIE attachments (hereafter "CIE Exhibit"), Exhibit L-119; "NRI Comment", Exhibit K-900; "B&H Comment", Exhibit K-856; "LaSalle Comment", Exhibit L-112; testimony of J. Miller, President, Belsaw Institute, Tr. 1765.

It is staff's finding, based on all available evidence, that while there appears to be a higher percentage of correspondence than residence students who enroll with avocational objectives, the overwhelming majority of home study school enrollees are motivated by occupational goals.[39] We are not persuaded that the modicum of contrary evidence which shows that a few students enroll to pass the time is dispositive of the argument that most home study students have occupational intentions.

This finding is based in part on the above-discussed studies schools submit to the Veterans' Administration, and is reinforced by the schools' own characterizations of their courses. All NHSC schools are required by their accrediting standards to report the primary objective of their courses. A review of their answers shows the vast majority of objectives to be purely occupational, with no stated recreational purpose.[40] In addition, the advertising copy[41] and sales materials and practices[42] utilized by NHSC member schools and other correspondence schools are geared to selling the course as a means to a new and better job or a better income. No emphasis on recreational or avocational purpose can be found in these recruiting efforts.

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[35] Veterans are not only likely to respond to some surveys differently than they do to the VA's surveys as to their course objective, but they tend to demonstrate a much stronger recreational bent than non-veterans. For example, compare the statistics discussed at note 33 where only 28 percent of veterans had an interest in an entry level job, with the comparable data for non-veterans where 48 percent had an interest in an entry level job. "B&H Comment", Exhibit K-856. This hobby orientation may stem from the fact that many home study courses offer enticing equipment (e.g., color TV's) as part of their course. The veteran can obtain the equipment at taxpayer expense, simply by signifying a vocational interest to the VA.

Thus, not only would the percentage of enrollees with vocational objectives be increased by counting all veterans as having such an objective, it would also be increased just by excluding veterans from the sample altogether.

[36] See the discussion at note 33 supra.

[37] Id.

[38] Thus, results from a few small schools do not change the overall picture since the large home study schools account for the overwhelming majority of enrollments in the industry. The largest ten schools enrolled over 70 percent of all NHSC enroll ments that year. The top twenty schools enrolled over 90 percent of NHSC students. "NHSC Statistics", Exhibit L-131.

[39] This estimate considers veterans who use VA benefits as having occupational objectives since they are required by law to have such an objective.

F. Financing

Most proprietary vocational school students receive some kind of government financial assistance. About two-thirds of trade and technical school enrollees receive aid, almost all either through guaranteed student loans or veterans' benefits.[43] A similar pattern emerges for students at accredited correspondence schools, with over a third enrolling using veterans' benefits and about a quarter using guaranteed student loans.[44]

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[40] Self-Evaluation Reports, Member Schools, NHSC, Exhibit F-64. Typical descriptions of course purpose provided by the schools themselves follow:

> In general, our programs are designed both for experienced persons who wish to enter an occupational field as well as for those already employed in these fields but now desire some upgrading. Id., School No. 23.
>
> The educational objective of such course is to furnish the reasonably diligent student with information and training which will enable him to enter the field of his choice and, with experience advance to positions of higher responsibility and income. Id., School No. 69.

[41] See Part I, Section IV-B(1) and (2) infra.

[42] See Part I, Section V-C(2) infra.

[43] See discussion of these two programs in Part I, Section VIII-C(1) and (2) infra. NCFPE reports that of private trade and technical students: 33 percent receive guaranteed student loans, 23 percent use veterans' benefits, five percent state aid, one percent MDTA, and five percent other types of aid. NCFPE, p. 129, Exhibit H-157. These figures are understated because of the rapid increase recently in use of guaranteed student loans. See also Guaranteed Student Loan Program, Hearings before the Senate Permanent Subcommittee on Investigations, 1975, Part 2, pp. 372, 383, Exhibit H-238.

[44] "NHSC Statistics", Exhibit L-131. The guaranteed student loan figures may be understated because of recent increases in that program.

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Other vocational school students, including enrollees at business, cosmetology, flight and hospital schools show a somewhat different pattern. Slightly more than half the students receive government aid, but in addition to VA benefits and guaranteed student loans, aid comes from the College Work Study Program, Manpower Development and Training Act programs, National Defense Student Loans, state aid and other sources.[45]

G. Sources of Information

One of the more remarkable facts developed by the public record is the paucity of information upon which consumers are compelled to base their enrollment decisions. The picture that emerges shows that the student not only relies almost entirely on representations by the school when making the decision, but avoids contacting the person most likely to provide objective career advice--a counselor.[46] The reliance on school representations in advertising and by sales representatives is even more acute for correspondence students.[47] They, of course, cannot easily visit the school or talk to the faculty.

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[44] (Continued)

Many students who have guaranteed loans are also utilizing veterans' benefits. Many of these students are concentrated in a few large schools. See discussion at Part I, Section VIII-C, *infra*.

[45] NCFPE breaks down government aid for these schools as follows: eight percent receive college work study, 17 percent guaranteed student loans, four percent MDTA, 12 percent VA, two percent state aid, four percent other. "NCFPE", Exhibit H-157.

[46] The AIR study of residence students asked whether various sources of information were of major importance in making an enrollment decision. Students could check several sources. The following responses were listed:

Family	23% Yes	77% No
High School Teacher	7% Yes	93% No
High School Counselor	9% Yes	91% No
Former Student	11% Yes	89% No
Campus Visit	13% Yes	87% No
Yellow Pages Ad	6% Yes	94% No
Talk with School Faculty	22% Yes	78% No
Newspaper, Radio or TV Ad	14% Yes	86% No
Contact with Sales Representative	26% Yes	74% No

[47] A survey of veterans enrolled in correspondence courses reveals that 75 percent did not receive any help or advice in making up their minds as to the type of training to take, 12 percent said they received advice from a school representative, one

(Continued)

Legal aid attorneys, consumer organizations, and consumers themselves have testified to how little many consumers know regarding *job potential, salaries, drop-out rates or other facts relevant* to their decision.[48] Government reports and conferences have pointed to the same problem.[49] The only major "information" source seems to be the schools' own self-serving representations.

Guidance counselors have testified that even they have very limited knowledge of important facts concerning proprietary

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[47] (Continued)

percent from a Military Service Education Officer, two percent from other non-professional counseling, and four percent from some combination of the above. "Summary of Responses to Questionnaire Sent to Veterans and Servicemen Who Had Received Educational Assistance from the Veterans' Administration for Enrollment in Correspondence Courses as of June 30, 1970", Questionnaire Instruments, "Recap of Data Extracted from VA Records on Veterans and Servicemen Enrolled in Correspondence Courses from June 1966 through June 1970", Exhibit C-43.

[48] See, e.g., testimony of R. Gross, attorney, Boston Legal Assistance Project, Tr. 32; testimony of A. Epstein, Special Investigator, Attorney General's Consumer Protection Division, Tr. 167; testimony of P. Paguette, New London Bar Association, Tr. 227; testimony of P. Gitlin, Executive Secretary, Massachusetts Consumers' Council, Tr. 289; testimony of H. Young, attorney, Boston Legal Assistance Project, Tr. 634; testimony of G. Yesser, attorney, Rhode Island Legal Services, Tr. 534; testimony of J. Hunt, Director of Volunteer Services, Peter Bent Brigham Hospital, Tr. 725; testimony of B. Simon, Director, Sanders Career School, Tr. 1193; testimony of P. Gasell, Attorney, formerly with New York City Department of Consumers, Tr. 1345; testimony of J. Faulkner, attorney, New Haven Legal Assistance Association, Tr. 1379; testimony of D. Rothschild, Professor, George Washington University, Tr. 2130; testimony of R.B. Berwald, attorney, San Mateo Legal Aid, Tr. 3972; testimony of S. Soehnel, attorney, San Mateo Legal Aid, Tr. 3988; testimony of J. Wich, Associate Professor of Marketing, University of Oregon, Tr. 4210; testimony of L. Vincent, former investigator for Baton Rouge Consumer Protection, Tr. 4246.

[49] Consumer Protection in Post Secondary Education, Second National Conference Report No. 64, CS (November 1974), Exhibit A-106; A Federal Strategy Report for Protection of the Consumer of Education, FICE Subcommittee on Consumer Protection (September 18, 1974), Exhibit H-45; Reducing Abuses in Proprietary Vocational Education, Twenty-Seventh Report, Committee on Government Operations, House Report No. 93-1649 (December 30, 1974), Exhibit H-168.

vocational schools and that such lack of information prevents them from counseling students concerning these schools.[50]

Various schools have mentioned that the prospective students' main source of information is from previous students,[51] but these comments come predominantly from small schools established for a long of time in a small community. This is hardly the case with correspondence schools, recently established schools, or schools in large metropolitan areas.[52] Schools utilizing large numbers of commissioned sales representatives can hardly claim to rely extensively on recommendations by ex-students.[53]

H. Vulnerability of Proprietary School Students

The pattern that emerges from this record is that the "typical" vocational school student is an individual who is unusually vulnerable to deceptive and misleading advertising and unfair sales and enrollment techniques. This vulnerability stems from a number of factors.[54] The student is a recent high school graduate, about 20 years old, and perhaps has tried some additional form of education but dropped out. The student is either unemployed or earning a low salary, and the household income is also below the average. This individual's labor market experience is limited. His inexperience is compounded by an almost total lack of either counseling or information about vocational education or career opportunities other than the school's own representations. Moreover, such an individual is primarily motivated to try to obtain a prestigious job at a high salary in order to become extricated from this low wage/mediocre job syndrome.

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[50] See, e.g., testimony of H. Schofield, representing Massachusetts Schools Counselors Association and the Massachusetts Personnel and Guidance Association, Tr. 507; testimony of J. Walsh, President, Greater Boston Guidance Club, Tr. 510; testimony of B. Shimberg, representing National Vocational Guidance Association, Tr. 1083; testimony of W. Griffith, Research Specialist, Fairfax County Public Schools, Tr. 2642; testimony of D. Smith, American School Counselor Association, Tr. 4276; testimony of R. Estell, Adult Career Counselor, Regional Occupational Program Counseling Center, Tr. 5753; testimony of G. Kutscher, Executive Director, Missouri Advisory Council on Vocational Education, Tr. 6476; testimony of J. Ashman, Director, Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495; placement information distributed to students of Weaver Airline Personnel School (722-3149, DK 3 0004), Exhibit C-74; testimony of D. Laramore, Supervisor of Vocational Guidance, Montgomery County Schools, Tr. 2960.

[51] Testimony of M. Willenson, Director and owner, Germaine School of Photography, Tr. 1859; testimony of D. Wagner, Vice-President, Berkeley Schools, Tr. 1757; testimony of O. Guttman, Washington Heights Beauty School, Tr. 1285; testimony of K. Renner, President, National Association of Cosmetology Schools, Tr. 6569.

[52] See, e.g., studies at notes 46, 47 supra.

[53] See discussion of number and size of schools using outside salesmen at Part I, Section V-A, infra.

[54] These factors are outlined in detail in subsections B-G of this section supra.

It would hardly be possible for all of the millions of students who attend the approximately 7,000 proprietary vocational schools to fit this specific mold of a particularly vulnerable consumer, even though the evidence does point to a remarkable concentration of students who closely resemble this "typical" student. There are, of course, more sophisticated students. However, anecdotes concerning sophisticated students are more than counterbalanced by examples of other consumers who are even more unsophisticated than the "typical" student described above. While some schools point to older enrollees, the record shows others who are exceptionally young. For example, one young woman testified about being misled when she enrolled in a modeling school at age 15.[55] Students with extensive postsecondary education are more than outnumbered by high school drop-outs.[56] More affluent students are counter-balanced by unemployed inner-city blacks.[57] Thus, when one thinks of isolated highly sophisticated enrollees one also has to remember some of the extremely vulnerable students from the other end of the spectrum who are also enrolled. For example, an individual whom experts evaluated as retarded and mentally incapable of learning a skilled trade, was enrolled concurrently in a truck driving course and two technically sophisticated correspondence courses.[58]

While it is clear that fifteen-year-olds and the mentally retarded do not have the sophistication to evaluate misleading and deceptive claims, the record also demonstrates that the "typical" enrollee cannot either. One salesperson who sold courses for both an accredited home study school and accredited residence schools described the students he enrolled:

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[55] Testimony of Ms. Bourgue, former student, Fashion Signature, Tr. 524.

[56] Twenty percent of non-veterans enrolled in home study schools did not finish high school. See note 12 supra.

[57] See notes 17, 18-20 supra.

[58] Memorandum to Robert Belair from Ann Stahl (October 7, 1974), re: enrollment of mentally retarded student in three vocational schools, Exhibit E-194.

> I have found the average student to be in his 20's, usually from middle or low income areas. Now these are usually people working at low-paying jobs or jobs that are seasonal and they are looking for a higher pay and a secure future. Most students have only a high school education and in some cases, less. We are looking at a person who is psychologically susceptible to accept a well-planned sales pitch.[59]

Such an individual is highly vulnerable to misleading claims and misrepresentations relating to jobs and earnings. This type of consumer just does not have an independent standard or guidance by which to measure vague and seductive claims about better jobs and high salaries. Just out of high school, often experiencing a first confrontation with the realities of the labor market, such an individual is particularly susceptible to a salesperson with a polished sales presentation who shows how the government will assist the consumer attending school and begin the road to success.

One researcher in measuring the ego strengths of proprietary students found them impulsive and motivated by extrinsic standards, as opposed to being inner-directed and careful in their decisions.[60] Thus the students' vulnerability rests not only with their difficulty in measuring the accuracy of job representations and understanding the literal meaning of ambiguous advertising; it also derives from an impulsiveness and lack of direction which make them easy targets for the polished sales tactics of commissioned salesmen whose approach is to take control of the situation, put the consumer on the defensive, and sign the prospect up for a costly contract on the spot.[61]

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[59] Testimony of W. Kelly, former salesperson, Jetma, ECPI, and other schools, Tr. 3418.

[60] Wilms compared the ego levels of private and public vocational students, controlling for a number of variables, and found that private school students had significantly lower ego levels.

Wilms based his measure on Adler's concept as recently operationalized by Loevinger and Strodtbeck. He considers low ego development to be characterized by impulsiveness, opportunistic behavior, and dependence on extrinsic influences. Higher levels of ego development are characterized by tolerance for ambiguity, conceptual complexity, and inner-directedness. Wellford W. Wilms, "The Effectiveness of Public and Proprietary Occupational Training", Center for Research and Development in Higher Education, University of California, Berkeley (October 31, 1974), p. 40, Exhibit C-110.

[61] A full discussion of the selling technique known as the "negative sell" appears in Part I, Section V-C(2), infra.

The predominance of such vulnerable consumers is attested to by the statements of school owners,[62] legal aid attorneys,[63] consumer groups,[64] government officials,[65] ex-sales representatives,[66] consumers,[67] and others.[68] There is no shortage of potential clients for proprietary school enrollments.

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[62] Testimony of D. Dorian, Administrator, Mansfield Beauty Academy, Tr. 377; testimony of J. Brennan, school owner, Tr. 599; testimony of J. Austin, Director, Austin Beauty School, Tr. 1101; testimony of O.Guttman, Washington Heights Beauty School, Tr. 1285; testimony A. Edelman, former director, private business school, Tr. 1606.

[63] Testimony of G. Yesser, former staff attorney at Rhode Island Legal Services, Providence, R.I., Director of the Consumer Affairs Division, Tr. 534; testimony of L. Goldblatt, supervising attorney with the Civil Division of the Legal Aid Society of New York, Tr. 1183; testimony of J. Faulkner, New Haven Legal Assistance Association, New Haven, Conn., Tr. 1379; testimony of J. Epstein, staff attorney at Mercer County Legal Aid Society in Trenton, New Jersey, Tr. 1678; testimony of B. Berwald, Legal Aid Society of San Francisco, Tr. 3981; letter from T. W. Pulliam, Jr., San Francisco Neighborhood Legal Assistance Foundation, to R. Sneed, F.T.C. San Francisco Regional Office (hereafter SFRO) (August 15, 1974), Exhibit A-59; letter from David S. Dolowitz, attorney, Salt Lake County Bar Legal Services, Salt Lake Utah, to F.T.C. SFRO (August 16, 1974), Exhibit A-64; Summary of Experience with Proprietary Vocational and Home Study Schools, submitted by Gil Graham, San Francisco Lawyer's Committee for Urban Affairs (August 19, 1974), Exhibit A-66; Summary of Experience with Proprietary Vocational and Home Study Schools, San Francisco Neighborhood Legal Assistance Foundation, Central City Office (August 13, 1974), Exhibit A-68.

[64] Testimony of P. Gitlin, Executive Secretary, Massachusetts Consumer Council, Tr. 289; testimony of E. Guggenheimer, Commissioner, Dept. of Consumer Affairs for New York City, Tr. 938.

[65] Testimony of J. Lack, Commissioner of Consumer Affairs, County of Suffolk, New York, Tr. 992; testimony of E. Gold, attorney, Kings County District, Tr. 1324; letter from Carol M. Hehmeyer, Assistant Director, attorney, San Francisco, to F.T.C. SFRO (August 8, 1974), Exhibit A-63; letter from John F. Hart, Sealer of Weights and Measures, County of Humbolt, Eureka, California, to F.T.C. SFRO (August 5, 1974), Exhibit A-65; Wisconsin Educational Approval Board, Hearings on Proposed Administrative Rules on: Proprietary Vocational Schools (September 12, 1972), Exhibit B-3; "Private Accreditation and Public Eligibility" (Vols. I and II) by Orlans, et al., Brookings Institute Report (February 1974), Exhibit D-21;

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65 (Continued)

"Survey of Federal Involvement in Post Secondary Proprietary Vocational Institutions", report by the Office of Education HEW, Exhibit H-132; testimony of L. Glick, Special Assistant Attorney General, State of Maryland, Tr. 3018.

66 Testimony of W. Ralston, former salesperson, Famous Schools, Tr. 400; testimony of R. Foss, former sales representative and sales manager, Famous Schools and ICS, Tr. 614; testimony of G. Gustafson, former salesperson, Virginia Computer College, Tr. 2581; statements of Gerry S. Mussells, former vocational school salesperson, (September 23, 1974) Exhibit E-213; testimony of W. Kelley, former salesperson, Jetma, ECPI, Famous Schools, etc., Tr. 3418; testimony of R. Zepernick, former salesperson, North American School of Conservation and Ecology, Tr. 3921; testimony of M. Cohen, salesperson for American Training Service, Tr. 2213; testimony of W. Randolph, salesperson, Tr. 450; report of interview with R. Worts, former salesperson, Exhibit E-105.

67 Student complaint letters, Exhibit J-1; testimony of D. Grand Pre, Colonel, USAR, Tr. 2538; testimony of L. Moody, former student, American Truck Training Services, Tr. 2950; statement of Mary E. Parent, former student of Sawyer College (May 23, 1975), Exhibit D-290; reports and correspondence re: seven former students of Grace Downs Air Career Training School (August 1973), Exhibit D-298.

68 Carl Bernstein, Series on Career Schools, The Washington Post, July 12-15, 1971, Exhibit D-69; transcripts of Hearings in the Matter of Weaver Airline Personnel Schools, Inc., et al., Docket No. 732-3167, F.T.C. Kansas City Regional Office, October-November, 1972, Exhibit E-158; compilation newspaper and magazine articles regarding vocational schools, May 6, 1974 - June 30, 1975; complaints and other correspondence re: Spencer Business College, compiled by New Orleans Office of Consumer Affairs; Sylvia Kronstadt, "Student Loans: How the Government Takes the Work Out of Fraud," Washington Monthly, November 1973, pp. 5-12, Exhibit H-67; Jean Carper, "How Uncle Sam Puts the Squeeze on Students", The Washington Post, Exhibit D-292; Jean Carper, "Career Schools Aren't Always What They Claim", Reader's Digest (June 1974), Exhibit B-9; digest prepared by F.T.C. staff, extracts of relevant testimony from hearings as follows:

- F.T.C. Hearings on Proposed Guides for Private Vocational and Home Study Schools (December 1970)
- Wisconsin Educational Approval Board, Hearings on Proposed Administrative Rules (September 1972)

- Hearings Before Subcommittee on Readjustment, Education and Employment of the Senate Committee on Veterans' Affairs (March 1972)

- New York State Hearings in the Matter of Computer Schools (December 1971), Exhibit A-23; and

transcripts of Hearings in the Matter of Weaver Airline Personnel Schools, Inc., *et al.*, Docket No. 732-3167, F.T.C. Kansas City Regional Office, October-November, 1972, Exhibit E-158; *Boston Globe*, Exhibit D-1; *Chicago Tribune*, Exhibit D-284; *Los Angeles Times*, Exhibit D-292; CBS Evening News with Walter Cronkite, August 18 and 19, 1975.

IV. Representations and Claims Made by Proprietary Vocational Schools

A. Introduction

As is evident from the discussion in the preceding section concerning the characteristics of the typical vocational school student, consumers of those services constitute a peculiarly vulnerable subset of the general population. Because of their youth, their generally low level of educational and occupational achievement, their lack of experience and sophistication, and their demonstrated and often impulsive desire for improved career and financial prospects, vocational school consumers are particuarly susceptible to advertising and sales techniques which are designed to exploit those characteristics. This section describes the representations and claims which schools make as part of their sales efforts, and examines their impact on the vocational school consumer.

Vocational schools make a variety of false and misleading claims in their print and media advertising, and in oral presentations by their sales representatives, in their efforts to attract students. The claims create false impressions about two general categories of information: jobs and earnings, and non-career related information about a school. Misleading representations about jobs and earnings comprise two further subcategories: specific claims about the placement and earnings success of a particular school's graduates, and general claims about the job market and earnings potential in a career field. Non-career related representations include claims about the quality of a school's instruction, facilities and equipment, its drop-out rate and refund policy, its affiliation with government and industry, and its accreditation and licensing status. In the following paragraphs, evidence on the record will be discussed regarding the type and prevalence of these claims. It should be noted at this point, however, that these claims, no matter how they are characterized, are all fundamentally grounded in the desire of the school to obtain the prospective student's commitment to enroll in the course. As such, they must be evaluated not only for their accuracy, but also for their potential to harm consumers making serious career decisions.

B. Job and Earnings Claims

Claims about the job and earnings prospects the vocational school student may expect upon graduation are the most important and prevalent forms of advertising used to solicit enrollees. Such representations are designed to appeal directly to the consumer's recognized sense of financial and career dissatisfaction, and the attendant desire for a better future. Job and earnings claims--both specific and general--will be examined in light of this intent to exploit the prospective student's susceptibility to such promises, as well as the profound impact that false or misleading job-related representations have on the student-consumer.

1. Specific Claims

Specific job and earnings claims include guarantees of jobs upon graduation, advertising which implies the offer of jobs rather than training, representations about the adequacy of the course for the purpose of obtaining employment, and claims about the placement and earnings success of a school's own graduates or enrollees.

Explicit guarantees of jobs upon graduation are almost always deceptive, since differences among students' capabilities and achievements and fluctuations in job market demand make it virtually impossible for any school to be sure of placing every enrollee in a suitable job. In fact, job guarantees are directly prohibited by numerous state laws and accrediting commission standards.[1]

Nevertheless, numerous instances are documented in the record in which complaints are filed concerning salespersons guaranteeing jobs to prospective enrollees.[2] Such guarantees are a logical outgrowth of many schools' approach to recruiting, training, compensating, and controlling commissioned sales representatives.

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[1] See, e.g., Part I, Section VIII-B, infra for a listing of states which prohibit job guarantees; see also Operating Criteria for Accredited Institutions, AICS, Exhibit F-2, Chapter 1, Part 4-1-300(d); Standards for Accreditation, NATTS, Exhibit F-12, Rule VIII(A)(10). See Part II, Section IV-B, infra for further discussion of the effects of specific job and earnings claims.

[2] See, e.g., interview report with Earl Lind and Sherri Greco, Chicago Better Business Bureau, re: experience with vocational schools, Exhibit D-83; Washington, D.C. Better Business Bureau Summary of Complaint Experience with Vocational Schools (May 22, 1974), Exhibit D-19; letter from J.L. Carney, Chief Counsel, Oregon Department of Justice, to S.J. Hughes, Seattle F.T.C. Regional Office (October 29, 1974), with memorandum summarizing student complaints and applicability of proposed TRR, Exhibit D-159; statement of Clyde J. Murdock, former student of Truckmasters, (December 5, 1974), Exhibit D-241; F.T.C. Complaint in the Matter of Nationwide Heavy Equipment Training Service, Inc., and Raymond E. Phillips and James M. Pennington, individually and as officers of said corporation, Exhibit D-120; F.T.C. Complaint in the Matter of Diesel Truck Driver Training School, Inc., Robert L. Kalabacka, and Raymond J. Watt individually and as officers of said corporation, Exhibit D-121; F.T.C. complaint in the Matter of World Wide Systems, Inc., and Steven L. Bradshaw, individually and as officer of said corporation, and d/b/a Associated Systems, and d/b/a Great Lakes Development Corporation, and d/b/a

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Coastway American Systems, and d/b/a Atlas Systems and d/b/a New Horizons Unlimited and others, Exhibit D-122; F.T.C. Complaint and Decision and Order in the Matter of Key Learning Systems, Inc., Key Training Services, Inc., Automobile-Household-Education Credit and Finance Corporation, and George Lawson, N. Wyman Rolph and Theodosia W. LaBarbera, individually and as officers of said corporation, Docket No. C-2275 (August 29, 1972), Exhibit D-117; F.T.C. Complaint in the Matter of Commercial Programming Unlimited, Inc., and Walter Small, individually and as an officer of said corporation, Exhibit D-123; correspondence regarding payment of refunds by Career Enterprises, Inc., Exhibit D-268; F.T.C. Complaint in the Matter of Electronic Computer Programming Institute, Inc., Chestkin Computer Corporation, York Mountain Computer Corporation, Data Processing Resources, Incorporated, and Electronic Computer Programming Institute of Fresno, Inc., Docket No. 8952 (January 24, 1974), Exhibit D-125; F.T.C. Complaint in the Matter of Tri-State Driver Training, Inc., and Robert L. Wise and Robert J. Kuhn, individually and as officers of said corporation, Exhibit D-126; findings of Fact and Conclusions of Law entered in the case of People of the State of California v. California Career Counseling, et al., submitted by Diana W. Cohan, Deputy Attorney General, San Francisco, California (August 19, 1974), Exhibit D-136; Petition for License Revocation in the Matter of General Training Services, Inc., to New York State Department of Education, by Elinor Guggenheimer, New York City Commissioner of Consumer Affairs (1974), Exhibit D-196; letter from J.L. Carney, Chief Counsel, Oregon Department of Justice, to S.J. Hughes, Seattle F.T.C. Regional Office (October 29, 1974), with memorandum summarizing student complaints and applicability of proposed TRR, Exhibit D-159; letter from M.H. Flam, staff attorney, El Monte Legal Aid Office, El Monte, California, to J. Doane, Los Angeles F.T.C. Regional Office (October 29, 1974), Exhibit D-164; letter from R. Rose, Head Deputy, Consumer and Environments Protection Division Office of the District Attorney, Los Angeles County, California, to K. H. MacVey, Los Angeles F.T.C. Regional Office (October 3, 1974), Exhibit D-167; State of Missouri v. Larry Northrip, d/b/a Special Training Institute and Southern Training Center, Petition for Injunction, Cause No. 56123 (February 25, 1974), Exhibit D-308; interview reports with former students of Savannah Automation School (702-3252), Atlanta Regional Office (May 1970), Exhibit C-28; statement of Betty McCullough, Oakland, California, former student of Heald Business College, Oakland, California (November 6, 1974), Exhibit C-108; letter from Deloris Nails, former student of Control Data Institute (December 18, 1974), Exhibit C-180; letter from David L. Hyemura, law clerk, San Francisco Neighborhood Legal Assistance Foundation, Bayview-Hunters Point Law Offices, San Francisco, California

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The incentives and pressures under which school sales representatives operate are often geared to the production of large numbers of initial enrollments without regard to the long-term consequences of indiscriminate sales policies.[3] Thus, salespeople sometimes use the explicit guarantee of a job as a sales tool to overcome the prospect's hesitation about the chances for finding employment upon graduation and thereby obtain his signature on an enrollment contract.

Schools often attempt to protect themselves from liability for such oral placement guarantees by inserting disclaimers in their written advertising. Such disclaimers usually consist of a general statement such as "no school can guarantee placement."[4]

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(August 13, 1974), Exhibit C-105; letter from W. J. Duecker, Manager, Better Business Bureau of San Joaquin County, Inc. to F.T.C. SFRO (September 30, 1974, Exhibit C-107; complaint of T. Hawkins, former student of International Tabulating Institute, Exhibit D-20; drop-out complaint against Key Training, Exhibit D-48; student complaint against Key Training, Exhibit D-48; F.T.C. interview reports with students and drop-outs of Key Training, Exhibit D-48; F.T.C. interview A. Brown, former student of International Tabulating Institute, Exhibit D-20; graduate complaint against Transport Systems, Exhibit D-49; drop-out complaint against Express, Inc., Exhibit D-49; graduate complaint against National Trucking Co., Exhibit D-49; graduate complaint against Continental Training Center, Exhibit D-65; drop-out complaint against Continental Training Center, Exhibit D-65; testimony of Donna Parkhurst, former student of Career Academy, Tr. 220; testimony of William Joquin, former student of Interstate Tractor Trailers, Inc., Tr. 981; testimony of Earl Allen, former student of Control Data, Tr. 1010.

[3] See Part I, Section V-B, infra for a discussion of the sales incentives used by proprietary schools to increase sales of their courses.

[4] See, e.g., McGraw-Hill, miscellaneous catalogs for National Radio Institute (NRI) and Capital Radio Engineering Institute (CREI), Exhibit D-53.

However, the disclaimers have themselves been used as sales tools by some sales representatives. For example, a former salesperson for two accredited residential schools stated that the disclaimer was explained away by telling the prospective enrollee:

> Even if the school graduated 100 students and all 100 students are hired by industry, it still would be unethical for the salesman to guarantee employment.[5]

By this device the salesperson has negated the disclaimer, and in fact has used it in a manner calculated to reinforce the expectation of placement by implying 100 percent placement of graduates.

One large correspondence school uses the following disclaimer:

> Of course, no school--not even ICS [International Correspondence School]--can guarantee you a better job. We can't make you smarter than you already are, and we can't make you ambitious if you're lazy.[6]

The thrust of the disclaimer is clear: it is only the dumb or lazy student who cannot get a job.

Related to job guarantee claims is the use of "help wanted" classified advertising by schools which are really offering training rather than jobs. Typically, such advertisements offer the possibility of employment at an attractive salary, without revealing that the advertiser is a school, not an employer:

> SEMI DRIVERS NEEDED Training now being offered through the facilities of Class B Common Carrier. Industry wages exceed $5.00

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[5] Statement by Stephen D. Warden, former salesperson, Career Academy and ECPI (September 17, 1974), Exhibit E-173. See also interview reports with former students of Continental Training Center, Inc., Atlanta, Regional Office (File No. 712-3436), Exhibit D-65; letter from David L. Hyemura, Law Clerk, San Francisco Neighborhood Legal Assistance Foundation, Bayview-Hunters Point law offices, San Francisco, California (August 13, 1974), Exhibit C-105; graduate complaint against unnamed school, Exhibit D-159.

[6] ICS advertisement which appeared in Radio Electronics (August 1975). See also testimony of Arnold Goldberg, former salesperson for American Motel School, Tr. 2799.

> per hour. Over the road Driver Training covering most states. Experience not necessary. For immediate application call... or write....[7]

The sequence of events which follows is a revealing example of the relationship between advertisements of this nature and the role of the salesperson.

> The prospective student would read a newspaper under the "Help Wanted" section, an advertisement which, in very bold, very bald general terms advertised what I believe to any reasonable reader would indicate a job offering... .
>
> In those advertisements there was absolutely no reference whatsoever to the fact that the placing agent was a school.
>
> The next step normally was a telephone call which was handled in some general terms by the school's representative with no disclosure whatsoever as to what the nature of the conference upcoming was.[8]

Prospects identified through responses to help-wanted advertisements are particularly vulnerable to the "negative sell" techniques employed by sales representatives to exploit the consumer's low self-image and desire for a better future.[9] The prospect, by responding to what is thought to be a job offer, has indicated a dissatisfaction with his present position, and is seeking better employment opportunities. Moreover, since it is usually not discovered until well into the interview that the consumer is being sold a course instead of interviewing for a job, the salesperson has placed the consumer on the defensive and is in a stronger position to make the sale.

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[7] Classified advertising for Universal Enterprises, Inc., July-September, 1972, Exhibit E-78.

[8] Testimony of Douglas Harper, Deputy Attorney and Acting Director of the Division of Consumer Affairs, State of New Jersey, Tr. 1530.

[9] *See* Part I, Section V-C, *infra* for a description of "negative sell" used by proprietary schools.

The use of help-wanted advertising has been the source of numerous FTC complaints, state and federal court cases, mail fraud investigations, and newspaper exposes.[10] Yet, the record is replete with continuing examples of such advertising.[11]

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[10] *See e.g.*, F.T.C. Complaint and Decision and Order in the Matter of James Sharp individually and as a former officer of Consolidated Systems, Inc., Docket No. C-2112 (December 3, 1971), Exhibit D-112; F.T.C. Complaint in the Matter of Diesel Truck Driver Training School, Inc., Robert L. Klabacka, and Raymond J. Watt, individually and as officers of said corporation, Exhibit D-121; F.T.C. Complaint in the Matter of World Systems, Inc., and Steven L. Bradshaw, individually and as officer of said corporation, and d/b/a Associated Systems, and d/b/a Great Lakes Development Corporation, and d/b/a Coastway American Systems, and d/b/a Atlas Systems and d/b/a New Horizons Unlimited and others, Exhibit D-122; F.T.C. Complaint in the Matter of United Systems, Inc., Skyline Deliveries, Inc., Express Parcel Deliveries, Inc., Truck Line Distribution Systems, Inc., Sheridan Truck Lines, Inc., and Advance Systems, Inc., and George Eyler, individually and as an officer of said corporation, Docket No. C-2271 (August 18, 1972), Exhibit D-124; F.T.C. Complaint in the Matter of Tri-State Driver Training, Inc., and Robert L. Wise and Robert J. Kuhn, individually and as officers of said corporation, Exhibit D-126; F.T.C. Complaint and Decision and Order in the Matter of Consolidated Systems, Inc., *et al.*, Docket No. 8867, Complaint (October 19, 1971) Decision (February 22, 1973), Exhibit D-131; F.T.C. Complaint and Decision and Order in the Matter of American States Development Corporation, *et al.*, Docket No. D-2362 (1973), Exhibit D-132; F.T.C. Complaint and Decision and Order in the Matter of Marshall Lewis Enterprises, Inc., d/b/a Radio Broadcasting Associates, *et al.*, Docket No. C-2178 (March 30, 1972), Exhibit D-133; Findings of Fact and Conclusions of Law entered in the case of People of the State of California v. California Career Counseling, *et al.*, submitted by Diana W. Cohan, Deputy Attorney General, San Francisco, California, dated August 19, 1974, Exhibit D-136; complaints filed against Career Enterprises, Inc., in Superior Court of California and U.S. District Court (Kansas), Exhibit C-266; State of Iowa v. Interstate Keypunch Institute of Des Moines, Inc., *et al.*, Petition for Injunction and Restoration of Money (Dec. 7, 1972), Exhibit D-310; Complaint, C-74-1332, Martha Dee Rattler, *et al.*, v. Career Academy, Inc., and John Ottina, U.S. Commissioner of Education (June 24, 1974), Exhibit C-114; several mail fraud indictments of correspondence schools, submitted by William J. Cotter, Chief Inspector, U.S. Postal Service (November 7, 1974), Exhibit D-110; letter from Dawn J. Doyle, Director, John Robert Powers School, Ft. Lauderdale, Florida, to FTC (April 16,) 1975), re: modeling school advertisements in newspaper classified sections, Exhibit D-303.

The impact on consumers of job guarantees and misleading help-wanted advertising is especially damaging in its long-term effects. Since prospects who are induced to enroll by such claims are given compelling reason to believe that they will ultimately obtain jobs, students express a profound sense of financial and psychological harm when jobs do not result.[12]

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[11] See, e.g., advertising copy of Nationwide Semi Driver Training Service, Lexington, Kentucky (May 1972), from file 722-3149, Exhibit E-230; Security Training Institute advertising insert in Star Presidian (April 18, 1975), Exhibit E-223; letter to Seattle Times (November 13, 1972), Automated Systems Incorporated's advertisements in classified section, Exhibit E-244; advertisement for Nationwide Development, Louisville, Kentucky, Exhibit D-88; post-enrollment script, Fast-Way Systems, Louisville, Kentucky, Exhibit D-89; series of letters to prospective students from Bear River Corporation, Recruiting and Screening Agents for the industry (truck driving), Exhibit D-93; letter from Dawn J. Doyle, Director, John Robert Powers School, Ft. Lauderdale, Florida, to F.T.C. (April 16, 1975), re: modeling school advertisements in newspaper classified sections, Exhibit D-303; assorted classified advertisements for truck driver training schools, Exhibit E-73; cover letter from Advertising Department of Universal Enterprises, Inc., to the Ingham County News, Mason, Michigan, explaining advertising copy, Exhibit E-77; classified advertising for Universal Enterprises, Inc. (July-September 1972), Exhibit E-78; advertisements for truck driving schools, Exhibit E-87; Ryder Technical Institute advertisement in "Help Wanted" classified section of The Modesto Bee (November 22, 1974), Exhibit E-144; statement of John Babcock, former student of Professional Investigators, Los Angeles, California and LaSalle Extension University, Chicago, Illinois (October 17, 1974), Exhibit D-218; graduate complaint against Worldwide Systems (Empire Schools), Exhibit D-59; drop-out complaint against World Wide Systems (Empire Schools), Exhibit D-59; drop-out complaint against Empire Schools, Exhibit D-59; "Correspondence School Ordered to Pay Back," (no cite), forwarded to Federal Trade Commission by G. Eyler, President, United Systems, Inc. (May 30, 1972), Exhibit D-78; "Michigan Orders Stop to City Firms' Ads," Indianapolis Star (March 8, 1973), Exhibit D-80; "Beware of Fraudulent Truck-Driving Schools," The Cincinnati Post (October 29, 1972), Exhibit D-91; "Vocational Schools: Promises, Promises," Newsweek (March 13, 1972), p. 80, Exhibit E-79.

[12] See student complaint letters, Exhibit J-1.

These students had felt even more assured than other enrollees that their substantial investment of money and time was a sound one, since the investment would be repaid by a promised job upon graduation. The effects of disillusionment and financial loss are thus felt all the more keenly by such students when the assured jobs do not materialize.

Another variant of job-related claims is the representation by a school that it is a government placement agency which is hiring for civil service positions. The record contains numerous examples of schools which induce students to enroll under the pretense that they were participating in a government-sponsored training or hiring program.[13] For example, in one

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[13] "Pay and Be Assured A Government Job?", Miriam Ottenberg, The Washington Star (April 16, 1972), (salespeople claimed they were part of "government administration" for civil service purposes) Exhibit D-309; State of Missouri v. Larry Northrip, d/b/a Special Training Institute and Southern Training Center, Exhibit D-308 (salespeople presented badge indicating they were agents of the United States Government); several mail fraud indictments of correspondence schools, submitted by William J. Cotter, Chief Inspector, U. S. Postal Service, (November 7, 1974), Exhibit D-110; School Services, Inc., et al., Order, Opinion, in regard to the alleged violation of the F.T.C. Act, Docket No. 8729 (October 4, 1971), Exhibit D-130; testimony of G. Yesser, attorney for Rhode Island Legal Services, Tr. 1379; F.T.C. Complaint and Decision and Order in the Matter of Key Learning Systems, Inc., Key Training Services, Inc., Automobile-Household-Education Credit and Finance Corporation, and George Lawson, S. Wyman Ralph Theodosia LaBarbera, individually and as officers of said corporation, Docket No. C-2275 (August 29, 1972), Exhibit D-117; memorandum from Wendell P. Rynerson, F.T.C. Washington, D. C. Regional Office to Atlanta Regional Office re: interviews with former students of Key Training Service, Inc., File No. 712-3365 (January 24, 1972), Exhibit D-45; drop-out complaint against Key Training, and student complaint against Key Training, Exhibit D-48; drop-out complaint against Key Training, Exhibit D-48; series of F.T.C. interview reports students and drop-outs--Key Training, Exhibit D-48; drop-out complaint against Empire Schools, Exhibit D-65; drop-out complaint against Continental Training Center, Exhibit D-65; interview reports with former students of Federal Training Service, Inc. (702-3387), Atlanta Regional Office (October 1971), Exhibit C-31; testimony of Elinor Guggenheimer, Commissioner of the Department of Consumer Affairs for New York City, Tr. 938; testimony of Eugene Gold, Kings County District Attorney, Tr. 1324.

F.T.C. survey of students solicited by a school offering training for a civil service examination, 10 of 29 students were led to believe that the school was a placement agency for the federal government, and 24 of 29 were led to believe that the federal government would hire them upon completion of their course.[14] These claims were, of course, false and deceptive.

In addition to claims which specifically misrepresent a school's status to be a government agent, claims by schools of affiliation with industry or government are often used to legitimize their course offerings. By using the names of large, respected companies or of federal agencies or groups in the field in which training is offered, the schools seek to lend an aura of credibility to their courses. These affiliation claims are then parlayed into implicit representations that a job with the affiliated corporation awaits the student after completion of the course.

Claims of "industry affiliation" take numerous forms. The most frequently encountered approach is the claim that the school is a screening or placing agent for a particular company. Typically, the claim is made that the school has been contacted by industry members to train qualified students for immediate employment. The testimony and complaints of state officials, consumers, former sales representatives and others, demonstrate that the use of fraudulent claims of this nature is extensive.[15]

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[14] Memorandum from Wendell P. Rynerson, F.T.C., Washington, D.C. Regional Office to Atlanta Regional Office re: interviews with former students of Key Training Service, Inc., File No. 712-3365 (January 24, 1972), Exhibit D-45.

[15] See, e.g., series of letters to prospective students from Bear River Corporation, recruiting and screening agents for the industry (truck driving), Exhibit D-93; several mail fraud indictments of correspondence schools, submitted by William J. Cotter, Chief Inspector, U.S. Postal Service (November 7, 1974), Exhibit D-110; Findings of Fact and Conclusions of Law entered in the case of People of the State of California v. California Career Counseling, et al., submitted by Diana W. Cohan, Deputy Attorney General, San Francisco, California (August 19, 1974, Exhibit D-136; Memorandum of Decision, Order to Show Cause, Memorandum of Points and Authorities Declarations in Support thereof, in the case of People of the State of California v. California Career Counseling, et al. (November 10, 1973), Exhibit D-153; F.T.C. Complaint and Decision and Order in the Matter of James Sharp, individually and as a former officer of Consolidated Systems, Inc., Docket No. C-2112 (December 3, 1971), Exhibit D-112; F.T.C. Decision and Order in the Matter of Consolidated Systems, Inc., and Allen Driscoll, individually and as an officer of said corporation, and Tom Johnson, and J. C. Triplett,

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individually and as former officers of said corporation, Docket No. 8867 (February 22, 1973), Exhibit D-115; F.T.C. Complaint in the Matter of Nationwide Heavy Equipment Training Service, Inc., and Raymond E. Phillips and James M. Pennington, individually and as officers of said corporation, Exhibit D-120; F.T.C. Complaint in the Matter of Diesel Truck Driver Training School, Inc., Robert L. Klabacka, and Raymond J. Watt, individually and as officers of said corporation, Exhibit D-121; F.T.C. Complaint in the Matter of World Wide Systems, Inc., and Steven L. Bradshaw, individually and as an officer of said corporation, and d/b/a Associated Systems, and d/b/a Great Lakes Development Corporation, and d/b/a Coastway American Systems, and d/b/a Atlas Systems and d/b/a New Horizons Unlimited and others, Exhibit D-122; F.T.C. Complaint in the Matter of United Systems, Inc., Skyline Deliveries, Inc., Express Parcel Deliveries, Inc., Truck Line Distribution Systems, Inc., Sheridan Truck Lines, Inc., and Advance Systems, Inc., and George Eyler, individually and as an officer of said corporation, Docket No. C-2271 (August 18, 1972), Exhibit D-124; F.T.C. Complaint and Decision and Order in the Matter of Consolidated Systems, Inc., et al., Docket No. 8867, Complaint (October 19, 1971); Decision (February 22, 1973), Exhibit D-131; F.T.C. Complaint and Decision and Order in the Matter of American States Development Corporation, et al., Docket No. C-2362 (1973), Exhibit D-132; complaints against Consolidated Systems by drop-outs, graduates, and prospective students, Exhibit D-47; series of F.T.C. Interview Reports--graduates and drop-outs of Nationwide Systems, Exhibit D-50; graduate complaint against United Systems, Inc., Exhibit D-50; statement of Clyde J. Murdock, former student of Truckmasters (December 5, 1974), Exhibit D-241; letter from Albert J. Fairer, Administrator, Accreditation and Private School Licensing, State of Hawaii Department of Education, to F.T.C. SFRO (August 13, 1974), Exhibit A-61; testimony of Douglas Harper, Deputy Attorney and Acting Director of the Division of Consumer Affairs, State of New Jersey, Tr. 1530; testimony of Mr. and Mrs. Patrick Westerman, Tr. 1628; testimony of Alfredo Burgos, Jr., former student of Interstate Tractor Trailer Training, Tr. 1704; testimony of Jackie Hunt, Director of Volunteer Srvices at Peter Bent Brigham Hospital, Tr. 725; testimony of Leslie Glick, Office of the Attorney General, State of Maryland Tr. 3018; testimony of Arnold Goldberg, former salesperson for American Motel School, Tr. 2799; materials received in connection with testimony of Jacquelynn Hunt, Director, Volunteer Services, Peter Bent Brigham Hospital (see Hearing Transcript, p. 725), Exhibit D-257; Cattle Buyers, Inc. (722-3149); series of correspondence between president and sales representatives with regard to policy on sales misrepresentation, Exhibit D-46; letter to F. Albanese, Ohio Board of School and College

(Continued)

Schools which are owned by large parent corporations often stress this affiliation in their advertising.[16] Schools using this form of advertising seek to bolster the credibility of their offerings through the reputation of the parent organization. More importantly, the prospect frequently is led to believe, directly or indirectly, that employment will be offered by the parent organization upon completion of the training, an offer that usually is not forthcoming.[17]

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[15] (Continued)

Registration, from H. Killmer, Colorado Board for Community Colleges and Occupational Education (August 14, 1973), re: illegal "school" operations under the guise of certain trucking companies and/or heavy equipment operator companies, Exhibit D-95.

[16] See, e.g., Bell & Howell, The New World of Opportunity, Exhibit E-1; IAS sales presentation binder, Exhibit E-1; interview reports with students of Radio Broadcasting Associates, Jersey City, New Jersey, 1970-1, F.T.C. New York Regional Office, Case Nos. DJO-0067 and 712-3205, Exhibit D-51; statement of Dennis Oubre (former student of Ryder Technical Institute, Inc.) (January 24, 1975), Exhibit D-251. For example, Bell & Howell Schools make the following claims:

> Bell & Howell Company is a World Leader in Electronics . . . Communication . . Education. Bell & Howell consists of some thirty divisions and subsidiaries and 27 manufacturing facilities. Bell & Howell products and services are in 112 countries. (Exhibit E-1)

It should be noted that many schools are owned by major corporations and thus have the affiliation readily available to them. See Part I, Section II-B(3), supra.

[17] Interview reports with students of Radio Broadcasting Associates, Jersey City, New Jersey, 1970-71, F.T.C. New York Regional Office, Case Nos. DJO-0067 and 712-3205, Exhibit D-51; statement of Dennis Oubre, former student of Ryder Technical Institute, Inc., (January 24, 1975), Exhibit D-251. In its suggested sales pitch Bell & Howell reinforces the lure of employment:

> I know from my own experience in meeting with people like you that the first important fact for you to know is exactly whom you're talking to. Let me give you a few basic facts about our organization.

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Another frequently employed device is the use of advertising which claims that a well-known company assisted the school in the preparation of the course. Typically, the advertising pitch cites to the "invaluable" contributions made to the school by industry members. Such "contributions" are usually made by companies the student might hope would subsequently employ them. A former salesperson cited an example of this type of approach which was included in interviews with prospects:

> I would like to point out to you here, John, some of the companies that actually helped to make Jetma what it is today... General Electric... United Airlines... one of our biggest backers Ford Motor Car Company, General Motors... . These companies have all helped to build Jetma into what it is today. They have helped us every way they possibly can, John, because they want us to continue to keep supplying to the industry well-trained gas turbine mechanics.[18]

Such affiliation claims subtly imply that the well-known companies named rely on the school to provide them with potential employees--which, of course, they do not usually do. The same salesperson noted above, described the purpose and intent of the claim of industry assistance:

> Now in reality, what have we done here, we have come out and said that industry actually helped us to do this work. Leaning on the industry when in reality, industry what they have done for us is that they have allowed certain men in their organization to help us to write the text of Jetma Technical

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[17] (Continued)

> Bell & Howell Schools is a wholly owned subsidiary of the Bell & Howell Company--a worldwide manufacturing organization that has been famous in the camera and projection business since 1907. We've been in the field of technical education since 1971. In our operation, we select and educate men for the many good electronics jobs there are in industry. (Exhibit E-1)

[18] Statement of Wallace Kelly, former salesperson for Jetma Technical Institute, South San Francisco, California (November 7, 1974), Exhibit E-138.

> Institute. They are not saying that they are going to employ our students, this is something that the salesmen are trained to imply without actually coming out and saying these companies definitely will hire you.[19]

The prospect's uncertainty about the value of the school's training in gaining employment tends to fade in the face of such industry "endorsements". The use of such affiliation claims in the schools' advertising appears frequently.[20]

Another type of specific job-related claim concerns the utility of the advertised training for obtaining employment in a particular field. Misrepresentations about the usefulness of a course in getting a job usually involve the omission of vital factors such as additional training or educational requirements imposed by unions or employers, state licensing requirements, or other prerequisites to employment.[21] For example, one large accredited correspondence school which purported to train students as lawyers failed to disclose the fact that no state recognizes home study as a means of obtaining a law degree.[22] Thus, students who enrolled in the school with the expectation of becoming attorneys were unaware that their training would not fulfill the requirements for admission to any state bar. The failure to disclose such prerequisites severely handicaps the prospective enrollee in evaluating not only future employment prospects, but also the validity of the course itself as a means to attain that employment.[23]

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[19] Id.

[20] See, e.g., advertisement, International Travel Training Courses, Inc., Washington Post (January 28, 1975), Exhibit E-201; statement of Wallace Kelly, former salesperson for Jetma Technical Institute, South San Francisco, California (November 7, 1974), Exhibit E-138.

[21] See Part II, Section IV-B and Part I, IV-B(2) infra.

[22] F.T.C. Order, Opinions, etc., in the Matter of LaSalle Extension University, Docket No. 5907 (June 24, 1971), Exhibit D-129.

[23] See, e.g., F.T.C. Complaint, Order, Opinions, etc., in the Matter of Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.) et al., Docket No. 8820, Complaint (July 29, 1970), Decision (May 19,1972), Exhibit D-134; F.T.C. Order Modifying Order to Cease and Desist, in the Matter of Blackstone School of Law, et al., Docket No. 5906 (August 28, 1971), Exhibit D-128; F.T.C. Order, Opinions, etc., in the Matter of LaSalle Extension University, Docket No. 5907 (June 24, 1971), Exhibit D-129; statements of several former

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Another form of a specific claim that implies job availability is the use of references to placement services. Offers of "free placement services" and "lifetime placement assistance" appear frequently in the schools' advertising.[24]

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[23] (Continued)

students of ECPI of Santa Clara Valley, California (March, 1975) with attachments, Exhibit D-271; statement of Tricia Convey, Costa Mesa, California, former student of Blair Colleges (November 6, 1974), Exhibit C-117; letter from John Bullock, ARRT, Chief of Respiratory Therapy, and Juana Luizzie, CRTT, Clinical Instructor, Valley Presbyterian Hospital, Van Nuys, California (November 8, 1974), Exhibit C-120.

[24] Advertisement for International Travel Training Courses, Inc., Washington Post (January 28, 1975), Exhibit E-201; pictorial portion of sales presentation, Bell and Howell Schools, Exhibit E-172; interview reports with former students of College of Automation, Jacksonville, Florida (April 1969), Atlanta Regional Office, File No. C-1099, Exhibit C-29; materials from File 742-3161, Job and Opportunity Advertisers Unnamed, Exhibit C-210; vocational school advertisements appearing in San Francisco Examiner-Chronicle, San Jose Mercury-News, and Fresno Bee (October-November 1974), Exhibit E-154; Unaccredited Proprietary Vocational Schools' Responses to Information Request, Exhibit C-200; materials from File 742-3161, Job and Opportunity Advertisers Unnamed, Exhibit C-210; transcription of "Chet Huntley Reports on the Weaver Airline Personnel School" recording given to students at time of sale, Exhibit D-107; Weaver Airline Personnel School Newspaper classified sales advertisements, Exhibit D-108; IGS magazine advertisement, Exhibit E-46; excerpts from Weaver Airline Personnel School Representative's manual: "Guidance Counselor Brochure" and "Resale Letter", Exhibit E-110; vocational school advertisements, Army Times (September 6, 1973, September 20, 1972, October 18, 1972, November 1, 1972), Exhibit E-237; series of letters to prospective students from Bear River Corporation, recruiting and screening agents for the industry (truck driving), Exhibit D-93; sales presentation binder, International Accountants Society (Bell and Howell Schools), Exhibit E-1; promotional material of National Truck Driver Training School, San Francisco, California, Exhibit E-72; assorted classified ads for truck driver training schools, Exhibit E-73; cover letter from Advertising Department of Universal Enterprises, Inc., to the Ingham County News, Mason, Michigan, explaining advertising copy, Exhibit E-77; "Annual Fall School Guide," Chicago Tribune (August 13, 1972),
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Representations about placement assistance are--like those concerning job guarantees, government or industry affliation, and utility of training--frequently deceptive or misleading. Evidence on the record indicates that the placement assistance which the student actually receives often falls far short of the advertised promises. Numerous student complaint letters, government actions, interviews, and testimony, point to the inadequacy of the placement services rendered.[25] Some "placement services"

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[24] (Continued)

Exhibit E-83; advertisements for truck driving schools, Exhibit E-87; advertisements for Washington School for Secretaries, the Washington Post (December 29, 1974), Exhibit E-159; United Electronics Institute sales materials (catalog, application, aptitude tests), Exhibit E-191; "Opportunities in Accounting for Men and Women," LaSalle Extension University, Exhibit E-203; interview reports with former students of College of Automation, Jacksonville, Florida (April 1969), Atlanta Regional Office, File No. C-1099, Exhibit C-29; Unaccredited Proprietary Vocational Schools' Response to Information Request, Exhibit C-200; materials from File No. 742-3161, Job and Opportunity Advertisers Unnamed, Exhibit C-210; Herzing Institutes bulletins (1972 and 1973), Exhibit D-52; McGraw-Hill, miscellaneous catalogs for NRI (National Radio Institute) and CREI (Capitol Radio Engineering Institute), Exhibit D-53; catalog (1974-75) and application, Northwest Technical Institute, Inc., Exhibit D-203; catalog (1972-74) and application, Rasmussen School of Business, Exhibit D-204; Whiting College, Cleveland, Ohio, 1973-74 catalog, Exhibit E-98; "The Creative Service," published by the Baxandall Company, Oshkosh, Wisconsin (May, June, July 1974), Exhibit E-126; "ICS Career Guide" miscellaneous advertisements, Exhibit E-24.

[25] See, e.g., letter from Albert J. Feirer, Administrator, Accreditation and Private School Licensing, State of Hawaii Department of Education, to F.T.C. SFRO (August 13, 1974), Exhibit A-61; interview reports with former students of College of Automation, Jacksonville, Florida (April 1969), Atlanta Regional Office, File No. C-1099, Exhibit C-29; Summary of Experience with Proprietary Vocational and Home Study Schools, Office of District Attorney, Contra Costa County, Richmond, California (August 7, 1974), Exhibit C-104; letter from David L. Uyemura, Law Clerk, San Francisco Neighborhood Legal Assistance Foundation, Bayview-Hunters Point Law Offices, San Francisco, California (August 13, 1974), Exhibit C-105; statement of Betty McCullough, Oakland, California, former student of Heald Business College, Oakland, California (November 6, 1974), Exhibit C-108; statement of Romero Cortey, San Francisco, California, former student of (Continued)

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Bay City College, San Francisco, California (November 7, 1974), Exhibit C-109; statement of Vanessa Clark, San Francisco, California, former student of Bryman School, San Francisco, California (November 5, 1974, Exhibit C-111; statement of Vanessa Clark, former student of the Bryman School, San Francisco (November 21, 1974), Exhibit C-128; statement of Max Gustafsson, San Francisco, California, former Airline Schools Pacific student (November 7, 1974), Exhibit C-135; statement of Alexander Miguel, San Francisco, California, former Control Data Institute student (December 3, 1974), Exhibit C-136; statement of Debra J. Boek (December 23, 1974), Exhibit C-164; letter from Deloris Nails, former student of Control Data Institute (December 18, 1974), Exhibit C-180; statement of Sally Keville, former student of Control Data Corporation (January 10, 1975), Exhibit C-190; statement of Terry Treadwell, former student of Pacific Travel School (February 21, 1975), Exhibit C-215; statement of Lester Williams, former student of West Coast Schools (April 8, 1975), Exhibit C-223; statement of Robert A. McNamara, Tualatin, Oregon, former student of Heald Business College, San Jose, California (December 2, 1974), Exhibit C-249; Washington, D. C. Better Business Bureau Summary of Complaint Experience with Vocational Schools (May 22, 1974), Exhibit D-19; letter to Sidney Marland, Commissioner of Education from Henry Gonzales, Rep. (Texas) re: sales representatives, refunds, deception, placement, with attachments (May 6, 1971), Exhibit D-24; interview report with Earl Lind and Sherri Greco, Chicago Better Business Bureau, re: experience with vocational schools, Exhibit D-83; interview reports with former students of Continental Training Center, Inc., Atlanta Regional Office, (712-3436), Exhibit D-65; letter from H. Young, Boston Legal Assistance Project, to K. Barna, F.T.C. Boston Regional Office (September 25, 1974), with demand for relief letters to ITT Technical Institute, Boston, Exhibit D-183; statement of Steven Chinn, former LaSalle Extension University student (November 15, 1974) Exhibit D-185; letter from H. W. Samson, Boston Legal Assistance Project to K. Barna, Boston F.T.C. Regional Office (July 10, 1974) with demand for relief letter to Electronic Computer Programming Institute, New York, New York (July 8, 1974), Exhibit D-182; statement of Sarah Benton, St. Helena, California, former West Coast Trade Schools student (September 23, 1974), Exhibit D-138; letter from J. L. Carney, Chief Counsel, Oregon Department of Justice, to S. J. Hughes, Seattle F.T.C. Regional Office (October 29, 1974), with memorandum summarizing student complaints and applicability of proposed TRR, Exhibit D-159; statement of Chesterfield Jones, Pacifica, California, former Control Data Institute student (November 29, 1974), Exhibit D-177; statement of John F. Powers, former student of Investigative Sciences (October 17, 1974), Exhibit D-215; statement of Richard Joseph Krawiec,

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former student of Career Academy (October 31, 1974), Exhibit D-216; *statement of Ms. Virginia L. Kingsman, former student* of Fashion Signatures School of Finishing and Modeling (November 6,1974), Exhibit D-127; statement of Joel Botelho, former student of Universal Insurance School, Dallas, Texas, and LaFayette Academy, Providence, Rhode Island (October 17, 1974), Exhibit D-219; statement of Henry B. Irvin, former student of Control Data Institute (December 19, 1974), Exhibit D-225; statement of Jay Thoreson, former student of Truckmasters, (January 11, 1975), Exhibit D-240; statement of Clyde J. Murdock, former student of Truckmasters, (December 5, 1974), Exhibit D-241; statement of Jeannette Owyang, former student of Heald Business College, (January 20, 1975), Exhibit D-245; statement of Jeff Detels, former student of United Systems, Inc., (March 19, 1975), Exhibit D-256; materials received from Boston Legal Assistance Project, Exhibit D-260; statement of Mary E. Parent, former student of Sawyer College, (May 23, 1975), Exhibit D-290; affidavit of Lawrence R. Scott, Alameda, California, former student of Commercial Trades Institute, Chicago, Illinois, (October 10, 1974), with attachments Exhibit E-135; affidavit of Lawrence E. Scott, father of former Commercial Trades Institute student (October 10, 1974), Exhibit E-136; statement of Gordon Brown, former United Systems Truck Driving School student (November 12, 1974), Exhibit E-152; letter from Stephen Scampini, former student of ECPI, (January 10, 1974), Exhibit E-200; interview reports with former students of Weaver Airline Personnel School (772-3149, DK3 00040), Exhibit D-105; complaint of L. Wyatt, former student of National Career Institute, Exhibit C-109; complaint of T. Cole, former student of International Tabulating Institute, Exhibit D-20; complaint of T. Hawks, former student of International Tabulating Institute, Exhibit D-20; complaint of A. Brown, former student of International Tabulating Institute, Exhibit D-20; complaint of M. Jefferies, former student of Lear Siegler Institute, Exhibit D-20; complaint of J. Williams, Gardner School of Business, Exhibit D-20; student complaint against Key Training, Exhibit D-48; series of F.T.C. Interview Reports with graduates and dropouts of Nationwide Systems, Exhibit D-50; responses to F.T.C. questionnaires by three graduates of Nationwide Systems, Exhibit D-50; testimony of R. Amico, graduate of Electronic Computer Programming Institute, Tr. 53; testimony of G. Hilty, former student of Electronic Computer Programming Institute, Tr. 68; testimony of E. Pardo, mother of ex-student of ITT Technical Institute, Tr. 116; testimony of H. Young, Attorney, Boston Legal Assistance Project, Tr. 364; testimony of Alston, former student of ITT, Tr. 441; testimony of R. Thompson, former student of ITT Technical Institute, Tr. 888; testimony of J. Faulkner, Attorney, New Haven Legal Assistance Association, Tr. 1379; testimony of S. Newman, Assistant Professor of Law at New York Law School, Tr. 1497; testimony of M. Echols, former student of General

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Training Service, Tr. 1636; testimony of L. Marshall, Dean of Community Service at Bergen Community College, Tr. 1692; testimony of A. Burgos, former student of Interstate TractorTrailer Training, Tr. 1704; testimony of L. Moody and C. Moody, former students of American Training Services, Tr. 2950; F.T.C. and court complaints are found at: San Mateo County Legal Aid Society press release: Class Action Consumer Fraud Suit Against Career Academy and U. S. Commissioner of Education (June 26, 1974), Exhibit C-113; several mail fraud indictments of correspondence schools, submitted by William J. Cotter, Chief Inspector, U.S. Postal Service (November 7, 1974), Exhibit D-110; F.T.C. Complaint and Decision and Order in the Matter of James Sharp, individually and as a former officer of Consolidated Systems, Inc., Docket No. C-2112 (December 3, 1971), Exhibit D-112; F.T.C. Decision and Order in the Matter of Consolidated Systems, Inc., and Allen Driscoll, individually and as an officer of said corporation, and Tom Johnson, and J.C. Triplett, individually and as former officers of said corporation, Docket No. 8867 (February 22, 1973), Exhibit D-115; F.T.C. Complaint in the Matter of Control Data Corporation and Automation Institute of America, Inc., Docket No. 8940 (October 3, 1973), Exhibit D-116; F.T.C. Complaint in the Matter of LaFayette United Corporation, LaFayette Academy, Inc., LaFayette Motivation Media, Inc., and Stuart Bandman, individually and as an officer and principal stockholder of LaFayette United Corporation, Docket No. 8963 (May 2, 1974), Exhibit D-118; F.T.C. Complaint in the Matter of Nationwide Heavy Equipment Service, Inc., and Raymond E. Phillips and James M. Pennington, individually and as officers of said corporation, Exhibit D-120; F.T.C. Complaint in the Matter of Diesel Truck Driver Training School, Inc., Robert L. Klabacka, Raymond J. Watt, individually and as officers of said corporation, Exhibit D-121; F.T.C. Complaint in the Matter of World Wide Systems, Inc., and Steven L. Bradshaw, individually and as officer of said corporation, and d/b/a Associated Systems, and d/b/a Great Lakes Development Corporation, and d/b/a Coastway American Systems, and d/b/a Atlas Systems and d/b/a New Horizons Unlimited and others, Exhibit D-122; F.T.C. Complaint in the Matter of Commercial Programming Unliimited, Inc., and Walter Small, individually and as an officer of said corporation, Exhibit D-123; F.T.C. Complaint in the Matter of United Systems, Inc., Skyline Deliveries, Inc., Express Parcel Deliveries, Inc., Truck Line Distribution Systems, Inc., Sheridan Truck Lines, Inc., and Advance Systems, Inc., and George Eyler, individually and as an officer of said corporation, Docket No. C-2271 (August 18, 1972), Exhibit D-124; F.T.C. Complaint in the Matter of Electronic Computer Programming Institute, Inc., Chestkin Computer Corporation, York Mountain Computer Corporation, Data Processing Resources, Incorporated, and Electronic Computer Programming Institute

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consisted of the school's providing the graduate with a listing of all employers in the area or a photocopy of the help-wanted advertisements appearing in local newspapers.[26] Several students complained either that the promised placement service did not exist, or that no service was rendered by the placement office.[27] Misrepresentations of this type apparently are not limited to

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[25] (Continued)

of Fresno, Inc., Docket No. 8952 (January 24, 1974), Exhibit D-125; School Services, Inc., et al. Order, Opinion, etc., in regard to the alleged violation of the F.T.C. Act, Docket No. 8729 (October 7, 1971), Exhibit D-130; Findings of Fact and Conclusions of Law entered in the case of People of the State of California v. California Career Counseling, et al., submitted by Diana W. Cohan, Deputy Attorney General, San Francisco, California (August 19, 1974), Exhibit D-136. Newspaper exposes are found at: "Vocational School Rip-Off," Tom Hamburger, The Bay Guardian (August 16, 1974), Exhibit A-58; "Vocational Schools--Deceptive and Unfair Advertising Practices", speech given by Steven Newburg-Rinn, F.T.C. (March 1974), Exhibit D-26; "The Knowledge Hustlers", Washington Post (June 23-26, 1974) Exhibit D-27; "Coastway American System--How a Truck Driving School Promises and Promises..., Overdrive (August 1973), Exhibit D-37; "Truck Drive Training Schools...They're Not All Crooked," Overdrive (June 1974), Exhibit D-38.

[26] See, e.g., letter from H. W. Samsen, Boston Legal Assistance Project, to K. Barna, Boston F.T.C. Regional Office (July 10, 1974), with demand for relief letter to Electronic Computer Programming Institute, New York, New York, (July 8, 1974), Exhibit D-182; interview report with Ms. Karan Spiegal, former student, ITT Tech. (November 12, 1974), Exhibit D-214; statement of Mr. Richard Joseph Krawiec, former student of Career Academy (October 31, 1974), Exhibit D-216; statement of Vanessa Clark, former student of Bryman School, San Francisco, California (November 5, 1974), Exhibit C-111; statement of Vanessa Clark, former student of the Bryman School, San Francisco (November 21, 1974), Exhibit C-128; testimony of R. Amico, former student of Electronic Computer Programming Institute, Tr. 53; testimony of G. Hilty, former student of Electronic Computer Programming Institute, Tr. 68.

[27] See, e.g., interview reports with, and letters from students of United Systems, Inc., (702-3182), Chicago Regional Office, Exhibit D-50; statement of Sarah Benton, St. Helena, California, former West Coast Trade Schools student (September 23, 1974), Exhibit D-138; letter from J. L. Carney, Chief Counsel, Oregon Department of Justice, to S. J. Hughes, F.T.C. Seattle Regional Office (October 29, 1974), with memorandum summarizing student complaints and applicability of proposed Trade Regulation

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unaccredited schools: many of the student complaints alleging misrepresentation of placement services were made against accredited correspondence and residential schools.[28]

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[27] (Continued)

Rule, Exhibit D-159; statement of John F. Powers, former student of Investigative Sciences (October 17, 1974), Exhibit D-215; statement of Ms. Virginia L. Kingsman, former student of Fashion Signatures School of Finishing and Modeling (November 6, 1974), Exhibit D-217; statement of Joel Botelho, former student of Universal Insurance School, Dallas, Texas, and LaFayette Academy, Providence, Rhode Island (October 17, 1974), Exhibit D-219; statement of Henry B. Irvin, former student of Control Data Institute (December 19, 1974), Exhibit D-225; materials received from Boston Legal Project, Exhibit D-260; affidavit of Lawrence R. Scott, Alamada, California, former student of Commercial Trades Institute, Chicago, Illinois (October 10, 1974), with attachments, Exhibit D-135; affidavit of Lawrence E. Scott, father of former Commercial Trades Institute student (October 10, 1974), Exhibit D-136; statement of Romero Cortey, San Francisco, California, former student of Bay City College, San Francisco, California (November 7, 1974), Exhibit C-109; statement of Vanessa Clark, San Francisco, California, former student of Bryman School, San Francisco, California (November 5, 1974), Exhibit C-111; statement of Robert A. McNamara, Tualatin, Oregon, former student of Heald Business College, San Jose, California (December 2, 1974) Exhibit C-249; interview reports with former sales representatives of Weaver Airline Personnel School (772-3149, DK3 0004), Exhibit E-105; testimony of R. Gross, Attorney, Boston Legal Project, Tr. 32; testimony of E. Pardo, mother of ex-student of ITT Technical Institute, Tr. 116; student complaint letters, Exhibit J-1; testimony of M. Echols, former student of General Training Service, Tr. 1636; testimony R. Foss, ex-sales representative and ex-sales manager of Famous Schools, ICS, Tr. 614.

[28] Accredited trade and technical schools: *see e.g.*, F.T.C. Complaint in the Matter of Control Data Corporation and Automation Institute of America, Inc., Docket No. 8940 (October 3, 1973), Exhibit D-116; statement of Chesterfield Jones, Pacifica, California, former Control Data Institute student (November 29, 1974), Exhibit D-177; F.T.C. Complaint in the Matter of Diesel Truck Driver School, Inc., Robert Klabacka, and Raymond J. Watt, individually and as officers of said corporation, Exhibit D-121; F.T.C. Complaint in the Matter of Electronic Computer Programming Institute, Inc., Chestkin Computer Corporation, York Mountain Computer Corporation, Data Processing Resources, Incorporated, and Electronic Computer Programming Institute of Fresno, Inc., Docket No. 8942 (January 24, 1974), Exhibit D-125; statement of Romero Cortey, San Francisco, California,

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28 (Continued)

former student of Bay City College, San Francisco, California (November 7, 1974), Exhibit C-109; statement of Max Gustafsson, San Francisco, California, former Airline Schools Pacific student (November 7, 1974), Exhibit C-135; statement of Alexander Miguel, San Francisco, California, former Control Data Institute student (December 3, 1974), Exhibit C-136; letter from Deloris Nails, former student of Control Data Institute (December 18, 1974), Exhibit C-180; statement of Sally Keville, former student of Control Data Corporation (January 10, 1975), Exhibit C-190; statement of Terry Treadwell, former student of Pacific Travel School (February 21, 1975), Exhibit C-215; letter from Stephen Scampini, former student of Electronic Computer Programming Institute (January 10, 1975), Exhibit E-200; testimony of R. Amico, former student of Electronic Computer Programming Institute, Tr. 53; testimony of G. Hilty, former student of Electronic Computer Programming Institute, Tr. 68; testimony E. Pardo, mother of ex-student of ITT Technical Institute, Tr. 116; testimony of R. Thompson, former student of ITT Technical Institute, Tr. 888; testimony of V. Guzzardi, former student, Electronic Computer Programming Institute, Tr. 1390; student complaint letters, Exhibit J-1;

Accredited Correspondence Schools: see, e.g., affidavit of Lawrence R. Scott, Alameda, California, former student of Commercial Trades Institute, Chicago, Illinois (October 10, 1974), with attachments, Exhibit E-135; affidavit of Lawrence E. Scott, father of former Commercial Trades Institute student (October 10, 1974), Exhibit E-136; F.T.C. Complaint in the Matter of LaFayette United Corporation, LaFayette Academy, Inc., LaFayette Motivation Media, Inc., and Stuart Bondman, individually and as an officer and principal stockholder of LaFayette United Corporation, Docket No. 8963 (May 22, 1974), Exhibit D-118; student complaint letters, Exhibit J-1;

Accredited Business Schools: see, e.g., statement of Betty McCullough, Oakland, California, former student of Heald Business College, Oakland, California (November 6, 1974, Exhibit C-108; statement of Vanessa Clark, San Francisco, California, former student of Bryman School, San Francisco, California (November 5, 1974), Exhibit C-111; statement of Vanessa Clark, former student of the Bryman School, San Francisco (November 21, 1974), Exhibit C-128; statement of Robert A. McNamara, Tualatin, Oregon, former student of Heald Business College, San Jose, California (December 2, 1974), Exhibit C-249; student complaint letters, Exhibit J-1; complaints of M. Jeffries, former student of Lear Siegler Institute, and J. Williams, former student of Gardner School of Business, Exhibit D-20.

Again, the proprietary school will entice the student to enroll by creating the inference of employability by emphasizing the size, scope, or efficacy of its "placement" mechanism.

Another common form of job and earnings claims is the use of student testimonials. Particularly in direct mail brochures, schools rely heavily on the statements of a few satisfied students who obtained jobs or received salary increases in jobs which they already held. Numerous examples of testimonials making placement and earnings claims can be found in the record.[29]

The use of testimonals as a means of claiming or implying placement success or indicating salary potential is inherently deceptive in the context of vocational education. Experts agree that the testimonial of a single student or a limited number of students is extremely misleading, and does not provide the prospective enrollee with any realistic measure by which to predict individual potential for success.[30] A school may enroll tens of thousands of students, most of whom do not achieve the promised job or earnings succcess, and then use one or two unrepresentative cases as proof of its placement claims.

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[29] Typical of such testimonials are the following:

> Taking your course in accounting helped me in a few ways. My salary was increased from about $8,000 a year to about $12,000 a year.
>
> I recently obtained a job in the industrial electronics field without previous experience and at a time when these jobs were very scarce. Without CREI, I could not have obtained this job.

Catalogs and selected sales materials of CREI, A Division of McGraw-Hill Continuing Education Center, Exhibit E-133; see also United Electronics Institute sales materials (catalog, application, aptitude tests), Exhibit E-191; LaSalle Extension University, catalog for Law Course, and selected advertisements, Exhibit E-196; memorandum from R. M. Redfield, Bureau of School Approvals, California Dept. of Education (August 21, 1972), re: Cleveland Institute of Electronics advertising circular, Exhibit E-241; promotional literature of CTA Truck Driver School, Los Angeles, California, Exhibit E-71; Bell and Howell School materials, Exhibit E-24.

[30] Testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495 at 9520; testimony of Dr. M. V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9422 at 9455; testimony of David L. Livers, Professor of Curriculum and Instruction, Illinois State Univ., Tr. 7800.

Without some guidance as to both the attrition rates of a school and its placement success, an anecdote from a satisfied student can be seriously unrepresentative of the typical enrollee's progress.[31]

Most schools seeking to attract the career-minded potential student rely on claims of their placement success with graduates, even if they do not resort to testimonials or advertise a placement service. The most commonly used placement and earnings claims are rather vague, general statements about a school's successful placement record such as "[our] constant efforts have often resulted in far more positions than the supply of qualified graduates"[32] or "be a draftsman" or "earn $7 an hour."[33] Such claims, while not citing a specific placement rate, are designed to generate the expectation that the enrollee, too, will be the beneficiary of the school's record of placement success--i.e., the student will obtain a job as a draftsman or earn $7.00 an hour. Both accredited and non-accredited schools make frequent use of such employment success claims.[34] Aside from the advertising itself, numerous student complaints,[35] law enforcement actions,[36]

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[31] Even the Executive Director of the trade association for trade and technical schools (NATTS) has serious problems with the use of testimonials by his member schools in their advertising:

> A relatively insignificant number of cases should not be used as a basis for advertising claims. The incidental achievements of a few persons, while perhaps providing an aura of great promise, are not sufficient grounds for embellishments in advertising.

Quoted in Report of the Committee on Veterans Affairs to Accompany S.2784, 1974, Report No. 93-907, p. 88, Exhibit A-77.

[32] Excerpts from Weaver Airline Personnel School Representative's manual: "Guidance Counselor Brochure" and "Resale Letter", Exhibit E-110; see also "Graduates receive an average starting salary of $40-$44 per day...," Automated Systems, Inc., letter to Seattle Times (November 13, 1972), Automated Systems Incorporated's advertisements in classified section, Exhibit E-244; see also advertisement of Washington School for Secretaries, The Washington Post (December 29, 1974), Exhibit E-159; Advertisement for Computer Learning Center, The Washington Post (December 29, 1974), Exhibit E-160; "Opportunities in Accounting for Men and Women," LaSalle Extension University, Exhibit E-203.

[33] See materials from File No. 742-3161, Job and Opportunity Advertisers, unnamed, Exhibit C-210.

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[34] *See*, *e.g.*, transcription of "Chet Huntley Reports on the Weaver Airline Personnel School" given to students at time of sale, Exhibit D-107; excerpts from Weaver Airline Personnel School Representative's manual: "Guidance Counselor Brochure" and "Resale Letter", Exhibit E-110; selected pages from catalog, Elkins Institute, Inc., Exhibit D-254; vocational school advertisements appearing in *San Francisco Examiner-Chronicle*, *San Jose Mercury-News*, and *Fresno Bee*, (October-November 1974), Exhibit E-154; advertisement for Computer Learning Center, *Washington Post* (December 29, 1974), Exhibit E-159; advertising copy, sales literature, catalogs, enrollment contracts and related public documents for schools that are members of the National Association of Trade and Technical Schools (200 schools), Exhibit C-200; materials from File 742-3161, Job and Opportunity Advertisers Unnamed, Exhibit C-210; selected vocational school ads, *The Defenders*, Marvel Comics Group (February 20, 1974), Exhibit D-208; assorted classified ads for truck driver training schools, Exhibit E-73; vocational school advertisements appearing in *San Francisco Examiner-Chronicle*, *San Jose Mercury-News*, and *Fresno Bee* (October-November 1974), Exhibit E-154; United Electronic Institute's sales materials (catalog, application, aptitude tests), Exhibit E-191; advertisement, International Travel Training Courses, Inc., *Washington Post* (January 28, 1975), Exhibit E-201.

[35] *See*, *e.g.*, statements of several former students of ECPI of Santa Clara Valley California with attachments (March, 1975), Exhibit D-271; Statement of Vanessa Clark, former student of the Bryman School, San Francisco (November 21, 1974), Exhibit C-128; statement of Max Gustafsson, San Francisco, California, former Airline Schools Pacific student (November 7, 1974), Exhibit C-135; statement of Alexander Miguel, San Francisco, California, former Control Data Institute student (December 3, 1974), Exhibit C-136; letter from Donald R. Lusby, former student of ECPI (received January 15, 1975), Exhibit C-197; statement of Terry Treadwell, former student of Pacific Travel School (February 21, 1975), Exhibit C-215; 215; statement of John Ekbatani, former student of United College of Business (April 7, 1975), with attachments, Exhibit C-222; letter from Linda B. Miller, former student of Draughon's Business College, Tennessee with attachments (June 11, 1975), Exhibit C-240; student complaint letters, Exhibit J-1; Complaints against non-accredited schools: advertisement for Automation Training Institute, St. Louis, Missouri, Exhibit D-92; F.T.C. NYRO staff memoranda,

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and newspaper exposes[37] attest to its widespread use.

The record shows that these claims concerning the placement success of a particular school are often false or unsubstantiated.[38] Students who relied on a school's representations of placement success have complained that their expectations of finding jobs proved to be illusory.[39] Prospective enrollees naturally assume that a school which advertises a history of successfully placing its graduates will be able to place them as well. They have no way of knowing that such claims are frequently false, and that even when schools can truthfully point to successful employment records for a few students, claims based on such successes are no guarantee that a job will be available for every future student, or even a significant percentage of students.

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[35] (Continued)

interview reports and correspondence re: seven former students of Grace Downs Air Career Training (August 1973), Exhibit D-298; statement of Tricia Convey, Costa Mesa, California, former student of Blair Colleges (November 6, 1974), Exhibit C-117.

[36] See e.g., Complaint, C-74-1332, Martha Dee Rattler et al., v. Career Academy, Inc., and John Ottina, U.S. Commissioner of Education (June 24, 1974), Exhibit C-114; several mail fraud indictments of correspondence schools, submitted by William J. Cotter, Chief Inspector, U. S. Postal Service (November 7, 1974), Exhibit D-110; State of Missouri v. Larry Northrip, d/b/a Special Training Institute and Southern Training Center, Petition for Injunction, Case No. 56123 (February 25, 1974), Exhibit D-308; F.T.C. Complaint in the Matter of Maralco Enterprises, Inc., New York School of Computer Technology, Inc., Education Beneficial, Inc., Tuition Payments, Inc., Hyman Marcus, et al., individually and as officers of said corporations, Exhibit D-119; Complaints filed against Career Enterprises, Inc. in Superior Court of California and U.S. District Court (Kansas), Exhibit D-266; letter from Anthony P. Uribe, Attorney, (July 11, 1975) with attachments, Exhibit D-286; Complaint, United States v. Atlantic School, Inc. R. W. Harriman, C.A. No. KC-3531 (May 8, 1972), with affidavits of nine former students, Exhibit D-296; State of Iowa v. Interstate Keypunch Institute of Des Moines, Inc., et al., Petition for Injunctions and Restoration of Money (December 7, 1972), Exhibit D-310.

[37] "Beware of fraudulent truck-driving schools", Cincinnati Post (October 29, 1972), Exhibit D-91; "Many Computer Schools Charged with Offering a Useless Education," Wall Street Journal (June 10, 1970), Exhibit E-27.

[38] See Part I, Section VII-C, infra.

[39] Student complaint letters, Exhibit J-1.

Similarly a statement such as "earn up to $7 an hour" does not inform the student what typical students will earn, or even how many students make $7 an hour or any other rate.

Finally, a school may use specific claims that rely on specific placement statistics. A California school, for example, has claimed in its advertising that "we ae the only school in Fresno that places over 90% of its graduates."[40] In addition to being frequently false or unsubstantiated,[41] citations of specific placement rates suffer from inherent definitional problems which make them particularly misleading. In calculating a "placement" figure, each school freely chooses its own definition of a training-related job, decides whether to include only those "available for placement" or those "actively seeking employment," and selects or omits several other critical factors.[42] Moreover, in most instances, students who have not graduated are not used in computing the ratio of total students to those students who actually obtained jobs.[43] Thus, absent some uniform criteria for assessing placement claims, the prospective enrollee is ill equipped to evaluate claims of job and earnings success.

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[40] Vocational school advertisements appearing in San Francisco Examiner-Chronicle, San Jose Mercury-News, and Fresno Bee (October-November 1974), Exhibit E-154.

[41] See e.g., testimony of Anthony De Tore, former salesman for Bell and Howell Schools, Tr. 5232; testimony of M. Cohen, former salesman for American Training Service, Tr. 2213; testimony of E. Guggenheimer, Commissioner, Department of Consumer Affairs for N.Y.C., Tr. 938; testimony of R. Siler, Director, Veterans Education and Training, West Va. Dept. of Education, Tr. 2245; testimony of R. Foss, former sales manager for ICS, Tr. 614; statement of S. Warden, former salesperson for ECPI and Career Academy, Exhibit E-173.

[42] See Part I, Section VII-A and B, infra.

[43] The schools' failure to include drop-outs in their placement statistics, and to disclose their drop-out rates to prospective students, compounds the potential for deception in specific placement claims. The drop-out information and the placement information necessarily go hand-in-hand. A prospective enrollee who is told that a school's placement rate for graduates is 90 percent would have an entirely different expectation of his own chances for success if he also knew that only 50 percent or sometimes 10 or 20 percent of the school's students graduate.

The failure to make accurate disclosures of relevant information such as drop-out rates and graduation rates is by no means accidental. Numerous school sales representatives,

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The impact on the consumer of specific job and earnings mispresentations must be assessed in terms of the prospective student's vocational intentions. Career-minded prospective students are enticed by job and earnings claims to enroll with the expectation that the individual school will offer job and increased earnings opportunity. The testimony and letters from former students as well as other evidence on the record reflect the fact that consumers do indeed perceive such claims to mean that they will get jobs as a result of enrolling in vocational schools.[44] The schools themselves profess to be in business

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[43] (Continued)

many of whom were former employees of accredited schools, testified that they were never provided with drop-out information by the schools, and therefore could not pass it on to the prospective students. *See, e.g.*, statement of Darell C. Balsham, Area Manager, CREI, Exhibit E-139, at page 5; testimony of Arnold Goldberg, former salesperson for American Motel School, Tr. 2799 at 2803; testimony of Wallace Kelley, former salesperson for Jetma Technical Institute, Tr. 3417 at 3438; statement by Stephen P. Warden, former salesman, Career Academy and ECPI (September 17, 1974), Exhibit E-173. Indeed, some sales representatives testified that they were explicitly instructed not to disclose drop-out information, even when the prospective enrollee asked for such data.

A former sales manager for a large accredited correspondence school described the school's attitude toward drop-out rate disclosures as follows:

> Q. [Robert G. Badal]
> Do the sales people tell the students about drop-out rates or placement rates in any specific way?
>
> A. [Wallace Kelley] The salesmen had better never mention the drop-out rate to any of our prospective students or he won't be working for us long.

Testimony of Wallace Kelley, former salesperson for Famous Schools, Electronic Computer Programming Institute, Jetma Technical Institute and others, Tr. 3417.

[44] Student complaint letters, Exhibit J-1; student complaint against Blair College, Exhibit C-117; complaint, C. Jones, former Control Data Institute student, (November 29, 1974), Exhibit D-177; testimony of Ms. Parkhurst, former Career Academy student, Tr. 220; *Chicago Tribune*, Exhibit D-284; testimony of L. Moody and C. Moody, former American Training (Continued)

primarily for the purpose of training students for specific careers.[45] Thus, the use of deceptive job and earnings claims is an effective and widely-used method for enrolling students precisely because students believe such claims to be true and often base their enrollment decisions on the misapprehension that they will obtain jobs as the result of their enrollment.

2. Generalized Claims

In previous paragraphs, evidence was outlined showing the variety of techniques utilized by proprietary schools to claim--either expressly through use of selective placement data and anecdotes or indirectly through references to affiliations or placement services--that individual students enrolling in the school will in fact obtain jobs based upon the school's training. One further technique which raises the expectation of employment will be described in this Section of the Report.

This technique involves the use of what will be referred to as "general" data to make claims concerning the job demand and salary ranges available in the career field for which the school offers training. Unlike specific claims which purport to pass on information about a school's actual performance, a generalized claim is one which implies success for the school by drawing on external proxies--*e.g.*, projections of growth in a field or projections of dwindling supplies of qualified trainees.[46]

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[44] (Continued)

Services students, Tr. 2950; Federal Interagency Committee on Education, *Executive Summary of the Report of the FICE Subcommittee on Consumer Protection* (September 18, 1974), Exhibit H-95; Virginia Knauer, "The Consumer's Need for Protection in the Education Market-Place," *Consumer Protection in Postsecondary Education*, Education Commission of the States (November 1974), Exhibit A-106; testimony of D. Smith, American School Counselor Association, Tr. 4285; testimony of R. Amico, former Control Data Institute student, Tr. 53; testimony of I. Pardo, former ITT student, Tr. 118; testimony of E. Alston, former ITT student, Tr. 443; testimony of P. Filter, former ICS student, Tr. 4261.

[45] *See, e.g.*, National Association of Trade and Technical Schools--Self-Evaluation Reports, Visiting Team Reports, and File Review Letters, Exhibit F-61; and National Home Study Council--Self-Evaluation Reports and Chairman's Letters, Exhibit F-64. *See also* Part I, Section II-A, *supra*.

[46] The following advertisement is illustrative of the use of generalized job and earnings claims:

(Continued)

Typically, the sources for such generalized claims are derived from labor supply and demand studies and projections prepared by state, federal, local, and private agencies.[47]

One of the most popular is the Occupational Outlook Handbook published by the Bureau of Labor Statistics of the U.S. Department of Labor.[48] The Handbook provides information as to the projected job demand, manpower supply, and salary information for numerous occupations.[49] Moreover, the Handbook contains information on

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[46] (Continued)

> "The Trucking Industry Needs You to Fill this Seat"
>
> "A recent bulletin issued by the U.S. Department of Labor Statistics entitled "The U.S. Economy in 1980" states "it is estimated that for-hire trucking will need an average of 58,600 new drivers each year over the next decade.... The current average annual earnings for California based truck drivers range from $14,844 for Los Angeles area, bobtail drivers to $17,588 for long time drivers." Promotional literature of CTA Truck Driver School, Los Angeles, California, Exhibit E-71.

[47] See, e.g., New Directions in Allied Health Manpower, Division of Manpower Development, USOE (1974), Exhibit C-132; Information on Supply and Demand Relationships For Specific Occupations in Principal Metro Areas of California, California Employment Development Department (1974), Exhibit C-134; Minnesota Salary Survey, Minnesota Department of Manpower Services (1973), Exhibit C-213; Air Conditioning and Refrigeration Institute, materials in File No. 742-3161, McGraw-Hill, Exhibit C-210.

[48] Occupational Outlook Handbook, U.S. Department of Labor Bureau of Labor Statistics. The Handbook is published annually.

[49] Indicative of the uses to which the schools have put such information is an advertisement used by one of the largest accredited correspondence schools:

> What the U.S. Government has to say about opportunities in accounting--The United States Department of Labor is conservative. It does not exaggerate employment trends and career opportunities. Businessmen, economists, guidance counselors--as well as individuals--rely on the accuracy of its forecasts. Yet here is just part of what the Department of Labor has to say--in

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those educational and training prerequisites for particular jobs that may limit the availability of those jobs to a certain segment of the labor market. The *Handbook* contains a section in each job area pertaining to job prerequisites, which sets forth the education, job training and qualifications generally recognized as necessary for employment in the field.[50]

The *Handbook* and similar publications also caution readers to be aware of the fact that manpower projections may not apply uniformly in all communities and that local labor markets may vary.[51]

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[49] (Continued)

> its latest official Occupational Outlook Handbook--about the prospects and earnings in the field: "Accounting employment is expected to expand very rapidly during the 1970's.... Starting salaries of beginning accountants in private industry were $8500 a year in 1970.... In the Federal Civil Service the entrance salary for junior accountants was $8510 in 1970.... Exhibit E-24.

[50] For example, in the field of accounting, the *Handbook* states:

> Although many graduates of business and correspondence schools are successful in small accounting firms, most large public accounting and business firms require applicants to have at least a bachelor's degree in accounting or a closely related field. Many employers prefer those with the master's degree in accounting. For beginning accounting positions, the Federal Government requires 4 years of college training or an equivalent combination of education and experience.

Occupational Outlook Handbook at p. 128. *See also* at p. 5, *"Jobs for which ..."*, series of five pamphlets published by the Bureau of Labor Statistics, Exhibit D-202.

[51] The Department of Labor qualifies its data as follows:

> *You may need local information*, too. The Handbook gives facts about each occupation for the United States as a whole.

Occupational Outlook Handbook, "Pointers on using the *Handbook*." The caveat is restated in another section of the Handbook as follows:

> These descriptive statements are presented

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Whatever sources are utilized by proprietary schools as the basis for their claims, the use of such claims is widespread through the industry. Generalized claims are freely and frequently disseminated through both written sources--newspapers, magazines and direct mail brochures[52]--and

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[51] (Continued)

> in a general, composite form and therefore, cannot be expected to apply exactly to specific jobs in a particular industry, establishment, or locality. Occupational Outlook Handbook at page viii.

See also California Labor Supply and Demand, California Department of Labor, Exhibit C-198.

[52] Advertisement for Nationwide Development, Louisville, Kentucky, Exhibit D-88; series of letters to prospective students from Bear River Corporation, recruiting and screening agents for the industry (truck driving), Exhibit E-93; student welcome letter, Fast-Way Systems, Louisville, Kentucky, Exhibit D-89; selected vocational school advertisements, The Defenders, Marvel Comics Group (February 29, 1974), Exhibit D-208; Weaver Airline Personnel School Newspaper classified sales advertisements, Exhibit D-108; Bell and Howell school materials, Exhibit E-1; International Correspondence Schools materials, Exhibit E-24; sales presentation and advertising materials for North American Training Academy (732-3362), Exhibit E-61; promotional literature of CTA Truck Driver School, Los Angeles, California, Exhibit E-71; advertising copy, sales literature, catalogs, enrollment contracts and related public documents for schools that are members of the National Association of Trade and Technical Schools (200 schools), Exhibit E-64; promotional literature of National Truck Driver Training School, San Francisco, California, Exhibit E-72; assorted classified advertisements for truck driver training schools, Exhibit E-73; promotional literature for Diesel Drivers Schools, Inc., Kansas City, Missouri, Exhibit E-74; advertisements for truck driving schools, Exhibit E-87; advertising copy for Nationwide Semi-Driver Training Service, Lexington, Ky. (May 1972), from file 722-3149, Exhibit E-230; vocational school advertisements, Army Times (September 6, 1973, September 20, 1972, October 18, 1972, November 1, 1972), Exhibit E-237; memorandum from R. M. Redfield, Bureau of School Approvals California Dept. of Education (August 21, 1970), re: Cleveland Institute of Electronics advertising circular, Exhibit E-241; vocational school advertisements, Marvel Comics Group (April 1976), Exhibit E-205; United Electronics Institute's sales materials (catalog, application, aptitude tests), Exhibit E-191; LaSalle Extension University, catalog for Law Course, and

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broadcast media,[53] and by salespeople during the course of their sales presentations.[54] Moreover, the record shows that generalized job and earnings claims are widely used by all

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52 (Continued)

selected advertisements, Exhibit E-196; home study schools advertisements, The American Legion Magazine (September, 1972), Exhibit E-197; classified advertising for Universal Enterprises, Inc. (July-September 1972), Exhibit E-78; Alumni Questionnaire, Cleveland Institute of Electronics (September 1973), Exhibit C-42.

[53] Statement of Lester Williams, former student of West Coast Schools (April 8, 1975), Exhibit C-223; letter from H. Young, Boston Legal Assistance Project, to K. Barna, Boston F.T.C. Regional Office (September 25, 1974), with demand for relief letters to ITT Technical Institute, Boston, Exhibit D-183; Complaint for Damages (Fraud and Deceit; Breach of Contract; Recision), James Vogus, *et al.* v. West Coast Trade Schools, *et al.*, Superior Court of the State of California for the County of Los Angeles, Docket No. 962294 (October 2, 1969), Exhibit D-229; statement of Jay Thoreson, former student of Truckmasters (January 11, 1975), Exhibit D-240; statement of Clyde J. Murdock, former student of Truckmasters (December 5, 1974), Exhibit D-241; advertising copy, sales literature, catalogs, enrollment contracts and related public documents for schools that are members of the National Association of Trade and Technical School (200 schools), Exhibit E-64; radio spots and selected advertisements, Elkins Institute, Inc., Exhibit E-209; radio spots for Career Enterprises, Inc., division of Fuqua Industries (712-3709), Exhibit E-218.

[54] *See*, *e.g.*, Summary of Experience with Proprietary Vocational and Home Study Schools, Office of District Attorney, Contra Costa County, Richmond, California (August 7, 1974), Exhibit C-104; statement of Tricia Convey, Costa Mesa, California, former student of Blair Colleges (November 6, 1974), Exhibit C-117; letter from Thomas McNesby, former student of ECPI, (received Jan. 13, 1975), Exhibit C-196; letter from Donald R. Lusby, former student of ECPI, (received Jan. 15, 1975); statement of Lester Williams former student of West Coast Schools (April 8, 1975), Exhibit C-223; statement of Robert A McNamara, Tualatin, Oregon, former student of Heald Business College, San Jose, California (December 2, 1974), Exhibit C-249; student complaint letters, Exhibit J-1; interview reports with students of Key Training, Washington, D.C. (November 1971), F.T.C. Washington Regional Office, Case No. 712-3365, Exhibit D-48; interview report with Karen Spiegal, former student ITT Tech. (November 12, 1974), Exhibit
(Continued)

sectors of the industry--accredited and non-accredited schools, residential and correspondence schools.[55]

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[54] (Continued)

D-214; Complaint for Damages (Fraud and Deceit; Breach of Contract; Recision), James Vogus, et al. v. West Coast Trade Schools, et al., Superior Court of the State of California for the County of Los Angeles, Docket No. 962294 (October 2, 1969), Exhibit D-229; statement of Clyde J. Murdock, former student of Truckmasters (December 5, 1974), Exhibit D-241; statement of Blanche Gray, former student of Telco Institute (December 30, 1974), Exhibit D-243; statement of Dennis Oubre, former student of Ryder Technical Institute, Inc. (January 24, 1975), Exhibit D-251; statement of Charles Duncan, former student of New England School of Investigation (December 6, 1974), Exhibit D-262; statement of Mary E. Parent, former student of Sawyer College, Glendora, California (May 23, 1975), Exhibit D-290; letter from Better Business Bureau of Greater St. Louis, Inc., to St. Louis Tech. (August 29, 1973), re: advertising practices, Exhibit D-311; statement of Steven Chin, former LaSalle Extension University Student (November 15, 1974), Exhibit E-151.

[55] One large accredited correspondence school, for example, uses the following advertisement:

> "A world of opportunity--Over one million (1,000,000) persons actively employed in Hospitality in the U.S. alone. This figure is expected to double during the next five years."
> Lewis Hotel-Motel School materials, Exhibit E-23

Other examples of advertisements run by all categories of schools are found in the record. See, e.g., Accredited correspondence schools: Weaver Airline Personnel School newspaper classified sales advertisements, Exhibit D-108; vocational school advertisments, The Defenders, Marvel Comics Group (February 20, 1974), Exhibit D-208; Bell & Howell Schools materials, Exhibit E-1; International Correspondence Schools materials, Exhibit E-24; vocational school advertisements, Army Times (September 6, 1973, November 1, 1972, October 18, 1972, September 20, 1972), Exhibit E-237; memorandum from R.M. Redfield, Bureau of School Approvals, California Department of Education (August 21, 1970), re: Cleveland Institute of Electronics advertising circular, Exhibit E-241; LaSalle Extension University, catalog for law courses, and advertisements, Exhibit E-196; home study, school advertisements, The American Legion Magazine (September 1972), Exhibit E-197; vocational school advertisements, Marvel Comics Group (April 1975), Exhibit E-205; advertising copy, sales literature,

(Continued)

Claims of high job demand or market growth or upward salary trends in prestigious career fields are designed to persuade prospective enrollees that enrollment in the advertised school's training will qualify them to take advantage of job opportunities that seem to be verified by "independent" studies. The record shows that use of generalized claims, as with specific claims, raises the implication that the student will have no difficulty in finding a job once completing the school's course, and students find these claims to be persuasive inducements to enroll.[56] Rarely, if ever, is the student made aware of the statistical or methodological problems previously referred

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[55] (Continued)

and related documents of 79 member schools, National Home Study Council, Exhibit E-63. Non-accredited correspondence schools: vocational school advertisements, The Defenders, Comics Group (February 20, 1974), Exhibit D-208; vocational school advertisements, Army Times (September 6, 1973, November 1, 1972, October 18, 1972, September 20, 1972), Exhibit E-237; Unaccredited Proprietary Vocational Schools; Responses to Information Request, Exhibit C-200; materials from File 742-3161, Job and Opportunity Advertisers Unnamed, Exhibit C-210. Accredited residential and business schools: Bell & Howell Schools materials, Exhibit E-1; advertising copy, sales literature, and related documents of 200 member schools, National Association of Trade and Technical Schools, Exhibit E-64; non-accredited residence schools: student welcome letter, Fast-Way Systems, Exhibit D-87; series of letters to prospective students from Bear River Corp., Exhibit D-93; sales presentation and advertising materials of North American Training Academy, Inc., Exhibit E-61; promotional literature of CTA Truck Driver School, Exhibit E-71; promotional literature of National Truck Driver Training School, Exhibit E-72; classified advertisements of various truck driver training schools, Exhibit E-73; promotional literature of Diesel Drivers School, Inc., Exhibit E-74; advertisements of various truck driving schools, Exhibit E-87; advertising copy of Nationwide Semi Driver Training Service, Exhibit E-230 Unaccredited Proprietary Vocational Schools' Responses to Information Request, Exhibit C-200; materials from File 742-3161, Job Opportunity Advertisers Unnamed, Exhibit C-210; classified advertisements of Universal Enterprises, Inc. (July- September, 1972), Exhibit E-78; sales materials of United Electronics Institute, Exhibit E-191.

[56] See, e.g., student complaint letters, Exhibit J-1; testimony of R. Amico, former Control Data Institute student, Tr. 55; testimony of A. Burgos, former Interstate Tractor Trailer Training student, Tr. 1704; testimony of E. Allen, Tr. 1010; testimony of G. Burnson, former Control Data Institute student, (Continued)

to--problems which the preparers of manpower studies freely admit and highlight in their own work.[57]

Moreover, despite the prevalence of these claims, schools frequently do not have independent data which would verify or substantiate the employment and earnings representation that is implicit in the claim. Indeed, many schools use the generalized data as proof of their own placement success wholly independently of any knowledge they may have of their students' actual placement success.[58]

Industry representatives have stated that since this generalized information appears in public studies and since it is information prospective students should know before deciding to enroll in a school, they freely utilize it without qualifications or prior substantiation.[59] But these arguments obviously miss the point. The record shows that in order to be meaningful, generalized information must be placed in context so that the reader is fully advised of statistical and methodological qualifications on the data.[60] Qualifications of this sort on the validity of the statistics themselves and on their usefulness for predicting an individual's chances for employment determine how the figures are interpreted or used. The extent to which generalized data can be wide of the mark as a valid predictor of individual placement success has been recognized by the Department of Labor itself. In its comment

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[56] (Continued)

Tr. 4399; testimony of W. Wilms, Center of Higher Education, University of California, Tr. 3225; testimony of S. Mindell, Deputy Head, Consumer Frauds and Protection Bureau, State of New York, Tr. 918; testimony of D. Cherot, Newark Office of Consumer Action, Tr. 1451.

[57] See text at footnotes 50 and 51, supra.

[58] See materials from File No. 742-3161, Unnamed Job and Opportunity Advertisers, Exhibit C-210.

[59] See Comments of NATTS, p. 54, Exhibit K-520; comments of AICS, p. 46, Exhibit K-867; comments of NHSC, p. 66, Exhibit K-439; comments of M-W Corp., Commercial Trades Institute, p. 12, K-863; comments of Bell and Howell Schools, p. 43, K-856; and comments of Control Data Corporation p. 3, K-862.

[60] See testimony of G. Seltzer, Professor of Economics and Industry Relations, University of Minnesota, Tr. 8856; testimony of W. Stromsdorfer, Director of Evaluation, U.S. Department of Labor, Tr. 2456; testimony of W. Wilms, Center for Research and Development in Higher Education, University of California, Berkeley, Tr. 3195; testimony of J. Wich, Associate Professor of Marketing, University of Oregon, Tr. 4210.

on the Commission's proposed Trade Regulation Rule, the Department expressed its view that generalized statistics on jobs or earnings should not be used to predict the employment potential for the graduates of any particular school.

> General statistics and other information cited in the Handbook is [sic] not designed nor intended to be used as a predictor of the capacity of a particular school to place its enrollees in specified job positions.[61]

The Department of Labor further emphasized that the Handbook is designed primarily for use by educational counselors in a counseling setting.[62]

Thus, the record shows that generalized data can be and often are false and deceptive--not only because they cannot be substantiated by the school's actual placement success[63] but also because of methodological difficulties that make the data difficult to analyze and interpret.[64] School owners themselves have testified that such data can be erroneous, particularly in a volatile job market.[65]

C. Non-Career Related Misrepresentations

While the most frequent forms of advertised and oral claims are in the area of jobs and earnings potential, schools often engage in other non-job related claims. While these claims cover a broad range of topics, their aim is identical--to obtain enrollments.

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[61] See letter of January 15, 1975 from W.K. Wokilberg, Solicitor of Labor, to C. Tobin, F.T.C., Exhibit K-623.

[62] Id.

[63] See Part I, Section VII-C, D and E, infra, for a description of the industry's ability to place students in job positions for which they are trained and schools' degree of knowledge about actual placement rates.

[64] One expert testified as follows:

> There is no agency anywhere, governmental, private, or otherwise that can make projections with any degree of certainty for an individual in a given locality that two years from now he will get a job in the field that he's presently studying, this is impossible.

Dr. M.V. Eninger, President, Educational Systems Research Institute, Tr. 9427.

[65] See K. Binkle, Director of Bay Valley Technical Institute, Tr. 4757.

One school's manual expressed it as follows: "If what we say here [the canned sales presentation] doesn't work, do whatever you have to to get the enrollment."[66]

Nearly all schools use some form of non-job related claims to augment their job-and earnings-oriented selling strategy. Such claims are found frequently in every medium used by the vocational school industry to sell its product--magazines, newspapers, direct mail brochures, radio and television, and in the sales agents' oral presentations. As in the case of job-related claims, the evidence in the record shows that schools regularly use other claims in an exaggerated, deceptive, or fraudulent manner in their efforts to attract enrollees. Non-job related misrepresentations take a countless variety of forms, and are so numerous and flexible that state and federal attempts to curb them are even less successful than in the case of deceptive job and earnings claims. When schools are stopped from using one kind of deceptive claim, they can readily adopt other forms of misrepresentations which are equally effective in enticing the unwitting prospective student. The following paragraphs will describe some of the more commonly used non-job related misrepresentations, which comprise only a representative sample of the myraid forms currently employed by the industry.

(1) Misrepresentations of Equipment and Facilities

Some students' decisions to enroll in a particular school are influenced by the promise of sophisticated and up-to-date equipment in sufficient supply. This equipment is often not available. For example, an Electronic Computer Programming Institute (ECPI) brochure states:

> Available in the school's machine laboratory for hands-on usage by students are the following Computer Equipment: IBM 360/30 Peripheral Equipment: IBM 2211 Disk, IBM 2401 Tape Drive.[67]

However, the situation which actually existed was described as follows:

> A quick tour through ECPI facilities, however, reveals no IBM 360 computer or such peripheral equipment as tape and disc storage devices. The only computer the applicant will see is

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[66] Testimony of W. Ralston, former salesperson, Famous Schools, Tr. 400.

[67] Statement of several former students of ECPI of Santa Clara Valley, California (March 1975), with attachments, Exhibit D-271.

> a UNIVAC 9200 considered by programming professionals to be as extinct as the dinosaur when compared to the latest computers on the market today.[68]

The record contains a large number of complaints that the equipment and materials were not as represented and that available equipment was inadequate to train the student in a meaningful way.[69] The failure to provide important equipment as promised can often be a significant factor in the student's inability to obtain a job or a prospective employer's refusal to hire the student.[70]

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[68] Statements of several former students of ECPI of Santa Clara Valley, California (March 1975), with attachments, Exhibit D-271; see also complaint of graduate against Consolidated Systems, Exhibit D-47.

[69] Testimony of Donn R. Grand Pre, Colonel, USAR, Tr. 2538; see also statements of several former students of ECPI of Santa Clara Valley, California (March, 1975), with attachments, Exhibit D-271; drop-out complaint against Ryder Technical Institute, Exhibit D-159; drop-out complaint against unnamed school, Exhibit D-159; statement of Jeff Detels, former student of United Systems, Inc. (March 19, 1975), Exhibit D-256; statement by Diane Allen, former student of Oakland College of Dental-Medical Assistants, Napa, California (June 26, 1975), with attachments, Exhibit D-285; letter from James L. Carney, Chief Counsel, Consumer Protection Div., Oregon Dept. of Justice, to S.J. Hughes, F.T.C. Seattle Regional Office (October 29, 1974), re: complaints from vocational school students, Exhibit D-300; F.T.C. Complaint and Decision and Order in the Matter of James Sharp, individually and as a former officer of Consolidated Systems, Inc., Docket No. C-2112 (December 3, 1971), Exhibit D-112; interview regarding student complaint against Savannah School of Automation, Exhibit C-28; statement of Mary E. Parent, former student of Sawyer College (May 23, 1975), Exhibit D-290; student complaint against Carnegie Institute, Exhibit D-259; affidavit of Lawrence R. Scott, Alameda, California, former student of Commercial Trades Institute, Chicago, Illinois (October 10, 1974), with attachments, Exhibit E-135; affidavit of Lawrence E. Scott, father of former Commercial Trades Institite stu- (October 10, 1974), Exhibit E-136; testimony of Robert Amico, graduate of Electronic Computer Programming Institute, Tr. 53; testimony of Margaret Capabianco, former student, ITT Technical Institute, Tr. 81; complaint by former student against Consolidated Systems, Exhibit D-47; interview report with Larry C. Tedford, Director of Marketing, Falls College, Atlanta, Georgia (July 31, 1970), Atlanta Regional Office, File No. 702-3123, Exhibit D-43; "Correspondence School Ordered to Pay Back," forwarded to Federal Trade Commission by G. Eyler, President, United Systems, Inc. (May 30, 1972), Exhibit D-78; interview reports with former students of Weaver Airline Personnel School (722-3149, DK3 00040), Exhibit D-105 ; Ken (Continued)

(2) Misrepresentations of Instruction

False claims about the size, expertise, and availability of the schools' instructional staffs are also widespread.[71] For

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[69] (Continued)

McEldowney and Katherine Higgins, "Bitter Lessons of Vocational Schools," San Francisco Bay Guardian (January 24, 1975), Exhibit D-236; student complaint letters, Exhibit J-1; testimony of Rick Gross, attorney, Boston Legal Assistance Project, Tr. 32; complaint of graduate against Consolidated Systems, Exhibit D-47; letter from Patrick S. Filter, attorney, Contra Costa, California Legal Services Foundation, to Rep. James G. O'Hara (July 26, 1974), re: Institute of Continuing Education and FISL involvement, Exhibit D-314; testimony of Stephen Newman, formerly of the New York City Department of Consumer Affairs, Tr. 1497; testimony of Gail Alterman, former student, Metropolitan School of Infant and Geriatric Care, Tr. 1248; student complaint against American Intstitute for Foreign Study, Exhibit D-146; materials received from Alexander MacNichol of Nisbet, MacNichol, and Ludwig, Attorneys and Counselors at Law, Exhibit B-81; letter from Elden Cone, Deputy Administrator, Department of Human Resources, Employment Division (October 29, 1974), with attachment, Exhibit G-79; testimony of Catrina and Lorenzo Moody, former students, American Training Services, Tr. 2950; "The Education Hucksters, "Caveat Emptor, The Consumer Protection Monthly (September 1974), Exhibit E-50; letter from David A.H. Rapaport, Esq., State of New York, Department of Law (June 13, 1975), with attachments, Exhibit G-105; interview reports with former students of Empire Schools (732-3407), Chicago Regional Office, Exhibit D-59; letter from former student of Heald Business College (December 17, 1974), Exhibit C-165; testimony of Bob Borden, former student, Electronic Computer Programming Institute, Tr. 3455; testimony of Anita Carter, former student, Heald Business College, Tr. 3485; hearings before the Permanent Subcommittee on Investigations of the Senate's Committee on Government Operations (November 1975), Exhibit H-238; see also Part I, Section VII-E(2), infra.

[70] See Part I, Section VII-E(2), infra.

[71] See, e.g., student complaint letters, Exhibit J-1; several mail fraud indictments of correspondnece schools, submitted by William J. Cotter, Chief Inspector, U.S. Postal Service (Continued)

71 (Continued)

(November 7, 1974), Exhibit D-110; F.T.C. Order, Opinions, etc., in the Matter of LaSalle Extension University, Docket No. 5907 (June 24, 1971), Exhibit D-129; Complaint for Damages (Fraud and Deceit; Breach of Contract; Recision), James Vogus, *et al*. v. West Coast Trade Schools, *et al*., Superior Court of the State of California for the County of Los Angeles, Docket No. 962294 (October 2, 1969), Exhibit D-229; statements of several former students of ECPI of Santa Clara Valley, California (March 1975), with attachments, Exhibit D-271; correspondence re: seven former students of Grace Downs Air Career Training School (August, 1973), Exhibit D-298; graduate complaint against unnamed school, Exhibit D-50; student complaint against ITT Technical Institute, Exhibit D-183; statement of John F. Powers, former student of Investigative Sciences (October 17, 1974), Exhibit D-215; student complaint against Carnegie Institute, Exhibit D-259; statement of Mary E. Parent, former student of Sawyer College (May 23, 1975, Exhibit D-290; testimony of H. Young, attorney, Boston Legal Assistance Project, Tr. 364; letter from former student of Heald Business College (December 17, 1974), Exhibit C-165; letter from P. W. Welch, Jr., Consumer Protection Specialist, Monterey County Department of Weights, Measures and Consumer Affairs, Salinas, California, to R. Sneed, F.T.C. San Francisco Regional Office (August 6 1974), Exhibit A-62; Vietnam Era Veterans Readjustment Assistance Act of 1974, Conference Report (August 1974), Exhibit H-93; Carl Bernstein, "Hard Sell on Job Training," *Washington Post*, with cover letter from John T. Godwin, M.D., to Senator Herman Talmadge (August 1971), Exhibit C-39; letter from Lawrence R. Sheahan, Consumer Affairs Coordinator, Department of Weights, Measures and Consumer Affairs, San Jose, California, to F.T.C. SFRO. (October 24, 1974), with summary student complaint attached, Exhibit D-141; complaints and other correspondence re: Spencer Business College, compiled by New Orleans Office of Consumer Affairs, Exhibit D-294; testimony of James R. Manning, Supervisor of Proprietary Schools, Virginia State Board of Education, Tr. 2371; F.T.C. staff Digest (June 1974), *see* Exhibit A-23; "The Education Hucksters, *"Caveat Emptor, The Consumer Protection Monthly* (September 1974), Exhibit E-50; "Summary of Experience with Proprietary Vocational and Home Study Schools," Office of District Attorney, Contra Costa County, Richmond, California (August 7, 1974), Exhibit C-104; ad for Automation Training Institute, St. Louis, Missouri, *see* Exhibit H-124; statement of James A. Sanders, Gresham, Oregon, former Ryder Technical Institute student (December 17, 1973), Exhibit D-178; letter from H. W. Samson, Boston Legal Assistance Project, to K. Barna, Boston F.T.C. Regional Office (July 10, 1974), with demand for relief letter to Electronic Computer Programming Institute, New York, New York (July 8, 1974), Exhibit D-182; statement of Howard Chuntz, Education Director

(Continued)

example, students find that teachers are not "certified" in their fields as claimed[72] and that teachers who are advertised as being available for special after-hours instruction for those with special problems never show up to help the student.[73] At times courses are even terminated midway through with the surprising announcement that everyone has graduated.[74] Similar problems exist with diploma-mills, which do not even purport to train students for careers, but merely to provide them with unearned credentials.[75] The inadequacy of the training offered has been

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[71] (Continued)

for the Respiratory Care Program, Orange Coast College (December 5, 1974), Exhibit D-270; letter from David A. H. Rapaport, Esq., State of New York, Department of Law (June 13, 1975), with attachments, Exhibit G-105; interview reports with former students of Savannah Automation School (702-3252), Atlanta Regional Office (May 1970), Exhibit C-28; statement of Tricia Convey, Costa Mesa, California, former student of Blair College (November 6, 1974), Exhibit C-117; "Vocational Schools: Promises, Promises," Newsweek (March 13, 1972), p. 80, Exhibit E-79; letter from Richard N. Heinz, former student of Ryder Techncial Institute, Ardmore, Okla. (February 5, 1975), with attachments, Exhibit D-252; Ken McEldowney and Katherine Higins, "Bitter Lessons of Vocational Schools," San Francisco Bay Guardian (January 24, 1975), Exhibit D-236; Bell & Howell school materials, Exhibit E-1.

[72] Statement of Howard Chuntz, Education Director for the Respiratory Care Program, Orange Coast College (March, 1975) with attachments, Exhibit D-270.

[73] See testimony of R. Amico, graduate, Electronic Computer Programming Institute, Tr. 53.

[74] See, e.g., letter from David L. Uyemura, law clerk, San Francisco Neighborhood Legal Assistance Foundation, Bayview-Hunters Point Law Offices, San Francisco, California, (August 13, 1974), Exhibit C-105; F.T.C. N.Y.R.O. staff memoranda, interview reports and correspondence re: seven former students of Grace Downs Air Career Training School (August 1973), Exhibit D-298; responses to F.T.C. questionnaires by three graduates of Nationwide Systems, and graduate complaint against unnamed school, Exhibit D-50; testimony of H. Young, attorney, to Oregon State Department of Education, Exhibit D-301.

[75] Testimony of H. Young, Attorney, Boston Legal Assistance Project, Tr. 364; "Proprietary Vocational Schools," Hearings before a Subcommittee on Government Operations House of Representatives, (July 16, 17, 24 and 25, 1974), Exhibit H-169.

the subject of numerous law enforcement actions,[76] and it is still one of the most common sources of student complaints.[77]

Misrepresentations about instructional quality are particularly harmful to the student-consumer since a major factor in an enrollment decision is the expectation that the training will be adequate to prepare the student for a job. When the enrollee finds upon entering a school that--contrary to the school's claims--the instructors are unqualified, incompetent, or disinterested, he is likely to drop out and suffer substantial financial penalties through no fault of his own. Even more harmed are those students who discover that their training was inadequate only after they have graduated and attempted to enter the job market.

(3) Availability of Part-Time Employment

Another form of misrepresentation is a school's unfulfilled promise of part-time employment while the student is in school to assist in defraying tuition and other expenses.[78] This misrepresentation is a frequent basis for students dropping out, due to resulting financial difficulties. Such students still have substantial tuition debts because of existing harsh refund policies, even though they enrolled based on the promise of part-time employment income and were forced to withdraw as a result of the schools' misrepresentations.

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[76] See e.g., Complaint, C-74-1332, Martha Dee Rattler, et al v. Career Academy, Inc., and John Ottina, U.S. Commissioner of Education (June 24, 1974), Exhibit C-114; several mail fraud indictments of correspondence schools, submitted by William J. Cotter, Chief Inspector, U.S. Postal Service (November 7, 1974), Exhibit D-110; partial file on American College of Paramedical Arts and Sciences, submitted by R. Richard Farnell, Deputy-in-Charge, Major and Consumer Frauds Division, Office of District Attorney (November 19, 1974), Exhibit D-244; San Mateo County Legal Aid Society press release: Class Action Consumer Fraud Suit Against Career Academy and U.S. Commissioner of Education (June 26, 1974), Exhibit C-113; letter from J. M. Maralde, Directing Attorney, El Monte Legal Aid Office, El Monte, California, to J. Doane, Los Angeles F.T.C. Regional Office (November 1, 1974), Exhibit A-71; F.T.C. Complaint in the Matter of Tri-State Driver Training, Inc., and Robert L. Wise and Robert J. Kuhn, individually and as officers of said corporation, Exhibit D-126; Final Judgment Pursuant to Stipulation, The People of the State of California v. Computing and Soft-ware, Inc., d/b/a West Coast Trade Schools, Inc., and Solar Electronic Schools, et al., Docket No. 952996, (March 23, 1971), Exhibit D-230; Complaints Filed against Career Enterprises, Inc. in Superior Court of California and U.S. District Court (Kansas), Exhibit D-266; correspondence regarding payment of refunds by Career Enterprises, Inc., Exhibit D-268; letter from Anthony P. Uribe, Attorney (July 11, 1975), with attachments, Exhibit D-286.

[77] See, e.g., student complaint letters, Exhibit J-1.

(4) Misrepresentations of Refund Policy

Misrepresentations in this area include both deliberate nondisclosure of the frequently punitive refund policies[79] used by the schools, and direct claims that refunds are pro rata when, in fact, they are not. Of course, a student is more likely to enter into a contractual relationship if led to believe that a change of mind will not lead to complete loss of all tuition paid.[80] The record contains some instances where even the enrollment contract does not disclose the refund policy.[81] The failure to disclose refund policies takes advantage of the fact that most consumers tend to think refunds are prorated unless clearly told otherwise.[82] Similarly, many veterans who enroll with their GI benefits are not told that they will have to pay with their own money if they drop out.[83] Many students have been so misinformed that they thought their Federally Insured Student Loan (FISL) was a scholarship, rather than a loan obligation.[84]

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[78] See, e.g., several mail fraud indictments of correspondence schools, submitted by William J. Cotter, Chief Inspector, U.S. Postal Service (November 7, 1974), Exhibit D-110; State of Iowa v. Interstate Keypunch Institute of Des Moines, Inc., et al., Petition for Injunction and Restoration of Money (December 7, 1972), Exhibit D-310; testimony of C. Orlando, former intern, Better Business Bureau, Tr. 1804; letter from Charles F. Hampton, Director, Guaranteed Student Loans, Office of Education, to student of Control Data Institute (January 3, 1975), Exhibit D-247; student complaints against ITT Technical Institute (represented by Boston Legal Assistance Project), Exhibit D-260; letter from L.R. Barbour, Supervisor, Private Vocational School Licensing, Oregon Department of Education, to S. J. Hughes, F.T.C. Seattle R. O. (October 29, 1974), re: complaints from vocational school students, Exhibit D-301; letter from David L. Hyemura, law clerk, San Francisco Neighborhood Legal Offices, San Francisco, California (August 13, 1974), Exhibit D-105; Bay Area Consumer Protection Coordinating Committee Consumer Alert Bulletin No. 10--Correspondence Schools, Exhibit C-112; "The Education Hucksters," Caveat Emptor, The Consumer Protection Monthly (September 1974), Exhibit E-50; testimony of M. Campbell, father of proprietary vocational school drop-out, Tr. 1854; student complaint letters, Exhibit J-1; S. Taylor, interview regarding student complaints against Savannah School of Automation, interviewed by F.T.C. Attorney, Exhibit C-28.

[79] See Part I, Section VI-B, infra, for a description of industry and state directed refund policies. See also Part I, Sections V-B and C, infra, for a description of techniques employed by commissioned salespeople.

(5) Non-Disclosure of Drop-Out Rates

Virtually no schools disclose their drop-out rates.[85] Such non-disclosure has caused many consumers to be deceived about graduation rates.[86] Moreover, when schools or their sales representatives do disclose drop-out information--in response to persistent student inquiries--it is often vague, misleading, or false.[87]

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[80] Testimony of Jan Vogel, Supervisory Collection Officer, Office of Education, HEW, Tr. 7758.

[81] See, e.g., letter from Loy R. Barbour, Supervisor, Private Vocational School Licensing, Oregon State Department of Education, to National Livestock Co., Phoenix, Arizona (March 14, 1975), with attachments, Exhibit G-104; letter from Charles C. Conlon, Jr., Specialist in Accreditation, Maryland State Department of Education (May 21,1975), Exhibit G-106; statement by Stephen D. Warden, former salesman, Career Academy and ECPI (September 17, 1974), Exhibit E-173; testimony of A. Goldberg, former salesman, American Motel School, Tr. 2799.

[82] See, e.g., testimony of Jan Vogel, Supervisory Collections Officer, O.E., HEW, Tr. 7758 at 7768; testimony of Allan R. Fierce, attorney, Cook County Legal Assistance Foundation, Tr. 7271 at 7302; complaint letters filed under Exhibit J-1.

[83] See Part I, Section VI-C, infra.

[84] See Part I, Section V-D, infra.

[85] See Part I, Section VI-A(4), infra.

[86] See, e.g., letter from Anthony P. Uribe, Attorney, San Diego, California with attachments (July, 11, 1975), Exhibit D-286; "Minimum Advertising Standards for Private Business, Trade and Technical Schools," recommended by the Better Business Bureau of St. Louis, Inc., St. Louis Office of Consumer Affairs and Missouri Association Trade and Technical Schools--Eastern Section, Exhibit E-91; F.T.C. Complaint in the Matter of Diesel Truck Driver Training School, Inc., Robert L. Klabacka, and Raymond J. Watt, individually and as officers of said

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Although information about drop-out rates should be a crititical factor in a student's decision to enroll in a school (since it would help him predict his individual chance for completing the course), most consumers are not sufficiently knowledgeable of the vocational school market to ask about other enrollees' experiences. It is therefore incumbent on the schools and their agents to inform prospective students of completion rates. This is particularly important when a school knows that, in spite of other claims it has made which induce the student to believe he or she will successfully complete the course, only a fraction of comparable enrollees do in fact graduate.

(6) Misrepresentations About Enrollment Deadlines

Schools and their representatives often seek to encourage reluctant prospective enrollees to enter into contracts as quickly as possible by expressly or impliedly representing that any delay

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[86] (Continued)

corporation, Exhibit D-121; F.T.C Complaint in the Matter of Control Data Corporation and Automation Institute of America, Inc., Docket No. 8940, (October 3, 1973), Exhibit D-116; F.T.C. Complaint in the Matter of World Wide Systems, Inc., and Steven L. Bradshaw, individually and as officer of said corporation, and d/b/a Associated Systems, and d/b/a Great Lakes Development Corporation, and d/b/a Coastway American Systems, and d/b/a Atlas Systems and d/b/a New Horizons Unlimited and others, Exhibit D-122; F.T.C. Complaint in the Matter of Commercial Programming Unlimited, Inc., and Walter Small, individually and as officer of said corporation, Exhibit D-123; F.T.C. Complaint in the Matter of Electronic Computer Programming Institute, Inc., Chestkin Computer Corporation, York Mountain Computer Corporation, Data Processing Resources, Incorporated, and Electronic Computer Programming Institute of Fresno, Inc., Docket No. 9852 (January 24, 1974), Exhibit D-125; testimony of M. Capabianco, former student, ITT Technical Institute, Tr. 81; "Or Would You Rather Be an Auctioneer?" *Soldiers* (November 1973), Exhibit A-24; statement by Stephen D. Warden, former salesperson, Career Academy and ECPI (September 17, 1974), Exhibit E-173; testimony of Arthur Goldberg, former salesperson, American Motel School, Tr. 2799; testimony of R. Knutson, President, Education Management Corporation Tr. 20001; testimony of R. Kislick, President and Chairman of the Board, Intext, Inc., Tr. 1819.

[87] *See* testimony of R. Knutson, President, Education Management
(Continued)

will result in the student losing the opportunity to enroll. Frequently this takes the form of misrepresenting that there are enrollment deadlines and after that the deadlines pass, the consumer will have foregone his opportunity to enter into the course.[88]

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[87] (Continued)

Corp., Tr. 2001; testimony of J. Middleton, graduate of computer school, Tr. 1512; Comptroller General of the U.S., Report to the Congress--Most Veterans Not Completing Correspondence Courses--More Guidance Needed, Exhibit H-10; testimony of R. Hoppock, former public school teacher, former professor, Tr. 1073, 1074; testimony of R. Foss, former sales representative and former manager, Famous Schools and ICS, Tr. 614; statement of S. Warden, former salesperson for Career Academy and ECPI, Exhibit E-173; testimony of A. Goldberg, salesperson for American Motel School, Tr. 2799.

[88] See, e.g., promotional literature of CTA Truck Driver School, Exhibit E-71; promotional literature of Diesel Drivers School, Inc., Exhibit E-74; Albert Merrill School v. Eugene Godoy, Civil Court of the City of New York (June 27, 1974), Exhibit D-195; Russell A. Lewis, former instructor, Commercial Trades Institute, "Is Home Study Biz a Rip-Off?," Exhibit D-33; F.T.C. Complaint and Decision and Order in the Matter of Career Academy, Inc., Docket No. C-2546 (September 13, 1974), Exhibit D-114; testimony of R. Gross, attorney, Boston Legal Assistance Project, Tr. 32; statement of Richard Joseph Krawiec, former student of Career Academy (October 31, 1974), Exhibit D-216; testimony of W. Ralston, former salesperson, Tr. 400; testimony of H. Chambers, former salesperson Tr. 1962; Lewis Hotel-Motel School materials, Exhibit E-23; F.T.C. Complaint in the Matter of Commercial Programming Unlimited, Inc., and Walter Small (1974), Exhibit D-123; Final Judgment Pursuant to Stipulation, The People of the State of California v. Computing and Software, Inc. d/b/a/ West Coast Trade Schools, Inc. and Solar Electronics Schools, et al., Docket No. 952996 (March 23, 1971), Exhibit D-230; testimony of R. Wasson, counselor-educator, Tr. 1810; Hearings before Subcommittee on Readjustment, Education, and Employment of the Committee on Veterans Affairs, U.S. Senate, on S. 2161 and related bills (March-April, 1972), Exhibit A-14; Ken McEldowney and Katherine Higgins, "Bitter Lessons of Vocational Schools," San Francisco Bay Guardian (January 24, 1975), Exhibit D-236; Harold Holley, Fact or Fallacy: The Pro's and Con's of Home Study and Correspondence, Hol-Cot Enterprises, Inc. (1972), Exhibit E-186; Rhode Island Legal Services, Complaint against General Training Services, Exhibit D-265. See also Part I, Section V-C and VII-E(3), infra. In some cases a claim that a deadline exists is patently false. For instance, in home

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Of course, the seriousness of this form of misrepresentation must be judged in light of several other facts on the record. First, vocational school consumers tend to be young and highly volatile in their decision-making--i.e., they are readily induced to make quick and often unreflective decisions.[89] Second, the consumer has probably been subjected to a series of claims about the job and earnings potential that awaits him if he enrolls in the course.[90] In this context, delays in signing a contract amount to postponement of obtaining a good job at a decent salary. Finally, as we will describe later[91], the essence of many proprietary school sales pitches is to make the student believe that he must act to convince the school that he is acceptable for enrollment. One attribute of this "negative sell" is to compel the consumer to avoid appearing hesitant so that any mention of an enrollment deadline is a test of the consumer's willingness to act.

(7) Misrepresentations About the Selectivity of Admission

The pretense that the student act in order to convince the school to allow him to enroll is carried to its extreme when the school falsely represents that the school has an admissions screening committee, or that aptitude or qualifications tests must be passed, or that only a few places are available for highly qualified applicants.[92] In fact, most schools will enroll any

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[88] (Continued)

study schools and residental schools without fixed schedules students can and do enroll on a daily recurring basis--i.e., by the very nature of the mode of instruction, no enrollment deadline is possible. Moreover, even residential schools with fixed class schedules often have course offerings so frequently (due to the short length of the course) that having "missed" a deadline only delays enrollment by several months. See Part I, Section II-B(4), supra.

[89] See Part I, Section III-H, supra.

[90] See Subsection B of this Section, supra.

[91] See Part I, Section V-C(2), infra.

[92] See, e.g., promotional literature of CTA Truck Driver School, Exhibit E-71; promotional literature of Diesel Drivers School, Inc., Exhibit E-74; Albert Merrill School v. Eugene Godoy, Civil Court of the City of New York (June 27, 1974), Exhibit D-195; Russell A. Lewis, former instructor, Commercial Trades Institute, "Is Home Study Biz a Rip-Off?," Exhibit D-33; F.T.C. Complaint and Decision and Order in the Matter of Career Academy, Inc., Docket No. C-2546 (September 13, 1974), Exhibit D-114; testimony of R. Gross, attorney, Boston Legal (Continued)

student who meets minimum age criteria.[93] Claims of selectivity are particularly absurd in some home study schools where tens of thousands of students are enrolled every year.[94]

As with claims about enrollment deadlines, false claims of selectivity take on added importance when juxtaposed with other facts on the record. Misrepresentations about enrollment selectivity not only encourage the student to believe that he must act quickly but also form the basis for the "negative sell" itself--if the school claims to be highly selective, the consumer comes to believe that he must sell himself to the school. In the process he loses any natural hesitance he may have in purchasing an expensive commodity.[95]

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[92] (Continued)

Assistance Project, Tr. 32; statement of Richard Joseph Krawiec, former student of Career Academy (October 31, 1974), Exhibit D-216; testimony of W. Ralston, former salesperson, Tr. 400; testimony of H. Chambers, former salesperson, Tr. 1962; Lewis Hotel-Motel School materials, Exhibit E-23; F.T.C. Complaint in the Matter of Commercial Programming Unlimited, Inc., and Walter Small (1974), Exhibit D-123; Final Judgment Pursuant to Stipulation, The People of the State of California v. Computing and Software, Inc. d/b/a/ West Coast Trade Schools, Inc. and Solar Electronics Schools, _et al._, Docket No. 952996 (March 23, 1971), Exhibit D-230; testimony of R. Wasson, counselor-educator, Tr. 1810; Hearings before Subcommittee on Readjustment, Education, and Employment of the Committee on Veterans Affairs, U.S. Senate, on S. 2161 and related bills (March- April, 1972), Exhibit A-14; Ken McEldowney and Katherine Higgins, "Bitter Lessons of Vocational Schools," _San Francisco Bay Guardian_ (January 24, 1975), Exhibit D-236; Harold Holley, _Fact or Fallacy: The Pro's and Con's of Home Study and Correspondence_, Hol-Cot Enterprises, Inc. (1972), Exhibit E-186; Rhode Island Legal Services, Complaint against General Training Services, Exhibit D-265. _See also_ Part I Section V-C and VIII-E(3), _infra_.

[93] _Id._ See footnote 92, _supra_. _See also_ Self-Evaluation Reports filed by member schools of the National Association of Trade and Technical Schools, Exhibit F-61, Association of Independent Colleges and Schools, Exhibit C-37, National Home Study Council, Exhibit F-64. In fact, some industry representatives and writers boast of the fact that proprietary schools will freely accept those who are not enrolled by more traditional educational institutions. _See, e.g._, testimony of Ratner, President S.W. Beauty College, Tr. 3289.

[94] _See_ Part I, Section II-B(3), _supra_.

[95] _See_ Part I, Section V-C, _infra_.

Moreover, selectivity claims are integral to a related abusive practice. By implying that the student must wait to see if he is "admitted" by the school, the school succeeds in getting the student through the applicable state or federal cooling-off period without any fear of cancellation.[96] Of course, if you have not been "accepted" yet, there is nothing to cancel.

(8) Misrepresentations of Accreditation and Government Approval

Claims of industry or governmental approval or affiliation are widely used by schools to bolster their image by implying the sanction of a respected third party--most frequently accrediting associations, state approval agencies, the VA, and HEW.[97] These claims which exaggerate or misrepresent the nature of licensure, accreditation, and affiliation are used extensively to confuse, intimidate, and impress prospective enrollees and to

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[96] See Part I, Section V-C, infra.

[97] See, e.g., testimony of W. Ralston, former salesperson Famous Schools, Tr. 400; statement of Wallace Kelly, former salesperson for Jetma Technical Institute, San Francisco, California (November 7, 1974), Exhibit E-138; letter from H.W. Samson, Boston Legal Assistance Project, to K. Barna, Boston F.T.C. Regional Office (July 10, 1974), with demand for relief letter to Electronic Computer Programming Institute, New York, New York (July 8, 1974), Exhibit D-182; Complaint and Affidavits filed with OE against Technical Education Corp. re: FISL, misrepresentation, refund, Exhibit D-23; letter from Better Business Bureau of Greater St. Louis, Inc., to St. Louis Tech. (August 29, 1973), re: Advertising Practices, Exhibit D-311; letter from Kansas City Diesel Drivers School Inc. (Febuary 26, 1974), to F.T.C., re: American Truck Driving School, Ltd. advertisements, Exhibit D-317; School Services, Inc., et al. Order, Opinion etc., in regard to the alleged violation of the F.T.C. Act, Docket No. 8729 (October 4, 1971), Exhibit D-130; McGraw-Hill, miscellaneous catalogs for NRI (National Radio Institute) and CREI (Capital Radio Engineering Institute), Exhibit D-53; F.T.C. Complaint, Order, Opinions, etc., in the Matter of Ohio Christian College (of Calvary Grace Christian Churches of Faith, Inc.), et al., Docket No. 8820, Complaint, July 29, 1970; Decision, May 19, 1972, Exhibit D-134; selected advertisements and catalogs from Private Vocational and Home Study School Project, Chicago F.T.C. Regional Office, Exhibit E-3; DOD Information Guidance Series on Commercial Correspondence Courses (September 1972), Exhibit H-11; Bell and Howell School Materials, Exhibit E-1; Weaver Airline Personnel School sales representative's manual with sales scripts, Exhibit E-107; advertisement for Automation Training Institute, St. Louis, Missouri, Exhibit H-124;

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remove their hesitation about committing themselves to substantial contracts.[98]

Another Better Business Bureau investigator, posing as a potential student, testified concerning the representations made to her:

> [M]any of these schools used the word "approved" when they should be saying "licensed." They say they are approved by the State of New York, the Department of Education. Now, in fact, the schools are licensed by the Department of Education, but they are not supposed to use the word "approved." The word "approved" is stronger, and the implication is there that someone is really giving these schools an okay, when, in fact, it is a license.[99]

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[97] (Continued)

Final Judgment Pursuant to Stipulation, People of the State of California v. Computing and Soft-ware, Inc., d/b/a West Coast Trade Trade Schools, Inc., and Solar Electronic Schools, et al., Docket No. 952996 (March 23, 1971), Exhibit D-230; testimony of R. Gross, Attorney, Boston Legal Assistance Project, Tr. 32; statement of Tricia Convey, Costa Mesa, California, former student of Blair Colleges (November 6, 1974), Exhibit C-117; statement of Howard Chuntz, Education Director for the Respiratory Care Program, Orange Coast College (December 5, 1974), Exhibit D-270; Ken McEldowney and Katherine Higgins, "Bitter Lessons of Vocational Schools," San Francisco Bay Guardian (January 25, 1975), Exhibit D-236; F.T.C. Complaint and Decision and Order in the Matter of Key Learning Systems, Inc., Key Training Services, Inc., Automobile-Household-Education Credit and Finance Corporation, and George Lawson, S. Wyman Rolph and Theodosia LaBarbera, individually and as officers of said corporation, Docket No. C-2275 (August 29, 1972), Exhibit D-117; materials received from Rhode Island Legal Services, Exhibit D-265; letter from B. Wallace, Consumer Affairs Deputy, Marin County Human Relations Department, San Rafael, California, to R. Sneed, F.T.C. SFRO (August 12, 1974), Exhibit C-106.

[98] "Adventures in Wonderland, or the Government and Accrediting," Harold Orlans, Educational Record, Vol. 54 (November 3, 1973), (reprint), Exhibit F-27.

[99] Testimony of Carolyn Orlando, former intern, Better Business Bureau, Tr. 1804; see also letter from B. Wallace, Consumer Affairs Deputy, Marin County Human Relations Department, San Rafael, California, to R. Sneed, F.T.C. SFRO (August 12, 1974), Exhibit C-106.

Yet another use of accreditation to confuse the prospective buyer is the implication that accreditation by a private association is equivalent to approval by the U.S. Government. A former salesperson testified about the illusion which some salespeople seek to create when explaining accreditation:

> Now analyzing the National Home Study Council's approval at first looks very innocent, but actually, what is implied is that Washington, D.C. itself has actually said that Jetma or any particular [school] having the National Home Study Council's approval has been approved by Washington, whereas it has not, it's a private organization set up to regulate home study schools... . Now as you can see we're already building in the mind of John, a perspective [sic] student, that the United States Government is standing behind this school. We're giving that man from the very beginning that feeling of security that his government is behind him and, in reality, this is not truth.[100]

This misrepresentation is facilitated by the fact that three of the major accrediting bodies are located in Washington, D.C.

In other instances, schools and their salesmen have claimed to be empowered by government agencies to approve FISL applications, to seek out veterans to assist them in furthering their education under the G.I. Bill,[101] and to offer "scholarships" and "grants" which ultimately turn out to be loans under the Guaranteed

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[100] Statement of Wallace Kelly, former salesperson for Jetma Technical Institute, South San Francisco, California (November 7, 1974), Exhibit E-138; see also testimony of Harold Holley, former salesperson, ICS, Tr. 2751; testimony of Harold Chambers, salesperson, Cleveland Institute of Electronics, Tr. 1972.

[101] Form letter to veterans from Tom Marzella, Area Representative, Institute of Computer Management, Inc., Cleveland, Ohio, Exhibit E-250; Final Judgment Pursuant to Stipulation, The People of the State of California v. Computing and Software, Inc., West Coast Trade Schools, Inc., and Solar Electronic Schools, et al., Docket No. 952996 (March 23, 1971), Exhibit D-230; materials received from Alexander MacNichol of Nisbet, MacNichol, and Ludwig, Attorneys and Counselors at Law, Exhibit B-81; S. Taylor, interview reports with former students of Savannah Automation School (702-3252) Atlanta Regional Office (May 1970), Exhibit C-28; statement of Richard Joseph Krawiec, former student of Career Academy (October 31, 1974), Exhibit D-216; Complaint for Damages (Continued)

Student Loan Program.[102] These ploys are discussed in the section concerning the use of federal monies as a sales tool.[103] At this point it is noted that a claim that the salesperson represents a federal agency disarms the prospect, who assumes that if the United States Government is involved, the course must be sound.

The thread which runs throughout such claims is the attempt by the schools to overcome the natural skepticism and reluctance with which the consumer normally would react to the sales pitch. Clearly, accreditation is an important piece of information, access to which is valuable to consumers. However, the advertising and oral claims presently made are calculated to deceive as much as to inform.

(9) Non-Disclosure of the Cooling-Off Period

Under many state and federal provisions, students are often

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101 (Continued)

(Fraud and Deceit; Breach of Contract; Recision), James Vogus et al. v. West Coast Trade Schools, et al., Superior Court of the State of California of the County of Los Angeles, Docket No. 962294 (October 2, 1969), Exhibit D-229; statement of Mary E. Parent, former student of Sawyer College, Glendora, California (May 23, 1974), Exhibit D-290; statement of Frank A. Micheletti, former Bell and Howell Schools student (November 14, 1974), Exhibit E-150; "Correspondence Schools and the Military Market," Stars and Stripes (November 1973), Exhibit E-51; "Testimony Attacks Dallas School Firm," Dallas Morning News (October 28, 1971), Exhibit 19; John Aquilino and James Morrell "Welcome Home, Soldier Boy; How Ex-Servicemen Got Defrauded in Their Search for Career Training," The Washington Star-News, (October 8, 1972), Exhibit D-315; "A Hard Lesson," Sylvia Porter, New York Post, (November 20, 1974), Exhibit D-190; testimony of W. Ralston, ex-salesperson, Famous Schools, ICS, B&H, Tr. 400.

[102] See, e.g., California v. California Career Counseling, Superior Court, Exhibit D-136; statement of Blanche Gray, former student of Telco Institute (December 30, 1974), Exhibit D-243; statement of Frank A. Micheletti, former Bell and Howell Schools student (November 14, 1974), Exhibit E-150; "Loan Program Probed at Whiting College," The Plain Dealer, Cleveland, Ohio (September 4, 1974), "3 Students Sue Whiting," The Cleveland Press (September 7, 1974), Complaint, William J. Brown, Attorney General v. Whiting Business College, et al., Cuyahoga County Common Pleas Court, Exhibit D-189; Sylvia Porter, "A Hard Lesson", New York Post (November 20, 1974), Exhibit D-190.

[103] See Part I, Section V-C, infra.

given the legal right to cancel their enrollments several hours to several days from the signing of a contract.[104] Evidence on the record shows that some students are deliberately not told of their right to cancel or are told they have no such right in order to defeat the remedial effects of cooling-off provisions.[105]

Sales representatives of many large schools routinely receive training in "post-sell" techniques, which include methods of circumventing cooling-off period requirements.[106] Sales agents are trained to instruct prospective students not to discuss their decisions to enroll with family or friends, and also to leave the prospect in suspense as to whether the school has "accepted" an individual's enrollment until well after the cooling-off period has expired.[107] Thus, in addition to directly misrepresenting or failing to disclose the student's right to cancel during the cooling-off period, salespeople effectively defeat such protections by discouraging any activity by the student which might result in the student's reconsidering or nullifying the contract.

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[104] See Part I, Section VIII-B(1), infra.

[105] See, e.g., letter from L. Barbour, Supervisor, Oregon Private Vocational School Licensing, to National Livestock Co. (March 14, 1975), re: Lewis Rapacki, unlicensed salesman, Exhibit G-104; complaint of C. Valentine, former student, against Temple School, Washington, D. C., Exhibit D-20; F.T.C. reports of interviews with former students of Key Training, (November 1971), Exhibit D-48; letter from C. Conlon, Accreditation Specialist, Maryland State Department of Education, to Revco Tractor-Trailer Training, Inc. (May 21, 1975), Exhibit G-106; Wisconsin Educational Approval Board, Hearings on Proposed Administrative Rules on Proprietary Vocational Schools (September 12, 1972), Exhibit B-3; Virginia Dept. of Agriculture, Summary of Investigation Regarding Student Complaint Against General Training Service, Inc. (January 14, 1974), Exhibit D-63.

[106] See, e.g., materials received from Boston Legal Assistance Project, Exhibit D-260; Findings of Fact and Conclusions of Law entered in the case of People of the State of California v. California Career Counseling, et al., submitted by Diana W. Cohen, Deputy Attorney General, San Francisco, California (August 19, 1974), Exhibit D-136.

[107] See, e.g., letter from former student of Heald Business College (December 17, 1974), Exhibit C-165; letter from former students of Transport Systems, Inc., Exhibit D-49; statement of Tricia Convey, Costa Mesa, California, former student of Blair Colleges (November 6, 1974), Exhibit D-136.

(10) Miscellaneous Misrepresentations

Students complain that they were told that their unfamiliarity with the English language would not affect their ability to benefit from home study courses, when in fact, all of the self- teaching lessons are printed only in English;[108] students are told falsely that the school's credits are transferable to four-year academic institutions;[109] they are told, or the contract states, that the tuition fee covers the cost of books and supplies and then later are presented with large additional bills for those items;[110] and they are misled as to the availability of money for loans, only to discover after having signed enrollment contracts that they are ineligible for, or otherwise unable to obtain such loans.[111]

D. Extent of Misrepresentation

Industry representatives often argue that the misrepresentations outlined above do not occur in any great numbers and at most are engaged in by a few schools who generate all the complaints by students.[112] The facts, however, are to the contrary and the record shows that misrepresentations of one form or another appear with a startling degree of frequency.

In the first instance, the record contains the complaint letters and comments from several thousand students.[113] These complaints relate to a broad spectrum of schools including residence and home study, accredited and unaccredited.[114] Moreover, these complaints are mostly those received by this agency and do not reflect the thousands of additional complaints that are received by other federal agencies, state officials, accrediting associations, legal aid groups, consumer organizations and better business bureaus.[115]

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[108] See, e.g., letter from former student of Heald Business College (December 17, 1974), Exhibit C-165.

[109] Reports of interviews with former students of Consolidated Systems, Exhibit D-47.

[110] See Part I, Section V-C(2), infra.

[111] Id.

[112] See, e.g., testimony of Robert A. Barton, President LaSalle Extension University, Tr. 8085; testimony of Bernard Ehrlich, Counsel to NATTS, NHSC, CAC, Tr. 9287. Of course we do not believe that the seriousness of these practices can be judged by the number of complaints received. On the contrary, the Record shows that consumers' problems with vocational school courses are ranked high by consumer groups not because of volume alone but because of the nature of the product, its cost, and the type of consumers who are harmed. See Part II, Section V, infra. See also testimony of D. Rothschild, George Washington University, Tr. 2130.

[113] Category "J" of the Vocational School TRR Public Record consists of 1,520 letters of complaint from students, dropouts, and graduates of proprietary vocational and home study (Continued)

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113 (Continued)

schools. The Division of Special Projects staff compiled the letters from several sources, including the U.S. Office of Education, the Veterans' Administration, and from the Commission's own files. The staff determined at the outset that it would not be feasible to compile a complete inventory of all student letters received by those agencies, since none had a central complaint answering system. Most such letters are processed at the regional office level by the VA and USOE, and each has several separate headquarters divisions which also receive complaints. We attempted, therefore, to obtain a representative sample of complaints from one office at each of the outside agencies, and from several sources at the Commission.

Other consumer complaints are found in the public record under categories B (Drop-out/Completion), C (Placement), D (School Representations/Claims), and E (Sales Practices).

[114] See, e.g., Student Complaints, Exhibit J-1. The proportion of schools complained of which are accredited (or were during the complainants' attendance) by the three major industry associations is substantial. Of the 1,520 total letters, 1,059, or 70 percent, concern schools accredited by the accrediting commissions of the National Home Study Council (NHSC), the National Association of Trade and Technical Schools (NATTS), and the Association of Independent Colleges and Schools (AICS). If resident truck driving schools, none of which is accredited, are excluded from the total number of schools, the percentage of accredited institutions complained of is 75 percent.

[115] See, e.g., testimony of Jan Vogel, Supervisory Collections Office, O.E., HEW, Tr. 7758; actions brought by state Attorneys, General against vocational schools, Exhibit G-18; testimony of R. Gross, Attorney, Boston Legal Projects, Tr. 32; testimony of A. Epstein, Special Investigator, Consumer Protection Division, Attorney General's Office, Tr. 167; testimony of P. Paquette, New London Bar Association, Tr. 227; testimony of P. Gitlin, Executive Secretary, Massachusetts Consumer Council, Tr. 289; testimony of H. Young, attorney, Boston Legal Assistance Project, Tr. 364; testimony of Mr. Walsh, Greater Boston Guidance Club, Tr. 510; testimony of G.
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But even in the absence of these thousands of individual complaints, industry arguments would be fallacious in any case simply because they erroneously equate the number of complaints with the degree and extent of abuse. The record shows that no such equation can be drawn.

First, the number of complaints is not a reliable index of industry misrepresentations largely because consumers do not always display a desire or talent for airing their grievances to responsible officials. The Ohio Attorney General's Office, for example, testified that while they would receive only a few complaints concerning a particular school, when an action

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115 (Continued)

Yesser, attorney, Rhode Island Legal Services, Tr. 534; testimony of M. Burns, Executive Secretary, Rhode Island Higher Education Assistance Corporation, Tr. 814; testimony of L. Sanders, President, Better Business Bureau, Eastern Massachusetts, Tr. 227; testimony of S. Mindell, Deputy Head of Attorney General's Consumer Fraud and Protection Bureau, Tr. 918; testimony of E. Guggenheimer, Commissioner, Department of Consumer Affairs of New York City, Tr. 938; testimony of B. Ratner, Law Professor, N.Y.U. Law School, Tr. 1016; testimony of R. Wolf, Acting Director, Division of Vocational Education, New Jersey State Department of Education, Tr. 1142; testimony of L. Goldblatt, attorney, Legal Aid Society of New York, Tr. 1183; testimony of E. Gold, attorney, Kings County District Attorney's Office, Tr. 1324; testimony of P. Gasell, Attorney, Legal Services for the Elderly Poor, Tr. 1345; testimony of J. Faulkner, Attorney, New Haven Legal Assistance Association, Tr. 1379; testimony of S. Newman, Assistant Professor of Law, N.Y.U. Law School, Tr. 1497; testimony of D. Harper, Deputy Attorney and Acting Director of the Division of Consumer Affairs, State of New Jersey, Tr. 1530; testimony of W. McDevitt, Assistant to the Chairman, State Consumer Protection Board, Tr. 1668; testimony of J. Epstein, attorney, Mercer County Legal Aid Society, Tr. 1678; testimony of L. Marshall, Dean of Community Service at Bergin Community College, Tr. 1692; testimony of P. Hynes, Chief of the Consumer Fraud Unit, U.S. Attorney's Office for the Southern District of New York, Tr. 1732; testimony of D. Rothschild, Professor, George Washington University Law School, Tr. 2130; testimony of W. Ringler, Deputy Commissioner of Higher Education for the Commonwealth of Pennsylvania, Tr. 2270; testimony of J. Manning, Supervisor of Proprietary Schools, Virginia State Board of Education, Tr. 2372; testimony of G. Chester, Consumer Officer and attorney, State Department, Tr. 2388; testimony of L. Glick, Office of the Attorney General, State of Maryland, Tr. 3018; testimony of Allan R. Fierce, attorney, Cook County Legal Assistance Foundation, Tr. 7271.

was brought, hundreds of dissatisfied students were discovered.[116] Similarly, accrediting associations had difficulty explaining why they received only a few complaints from students of schools who enrolled thousands of students and whose practices were so deceptive that the schools lost their accreditation.[117]

One reason consumers do not complain is that they do not know to whom they should complain. Several persons testified that it was difficult to find the appropriate agency in a state with which to register a complaint.[118] It is not surprising that if an attorney or other knowledgeable person has trouble, an unsophisticated vocational school consumer does also.

A representative of a Better Business Bureau explained that many people do not complain for a number of other technical reasons--including requirements that the complaint be in writing. Thus, the BBB usually multiplies the number of complaints by some constant to estimate actual volume of abuse.[119] Some state agencies require such a high degree of written documentation of misrepresentations--even when they are oral misrepresentations--that many students simply give up in frustration.[120]

Others do not complain because they do not realize that they may actually receive some kind of legal redress for their problems. An attorney testified that his clients did not even complain to him about their experiences that led up to their present problems--a collection action by the school. It was only after long conversation that the attorney was able to identify potential defenses and counterclaims available to the student.[121] Others may think the reason the course was too difficult or that they did not get a job was not the school's misrepresentations but their own inadequacy.[122] This is particularly true among those accustomed to failure--as many vocational school students are. Thus, it is not surprising that students wait, as in the Ohio case, for a government authority to allege misconduct before complaining to government authorities.

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[116] Testimony of L. Winarsky, Assistant Attorney General, Ohio Tr. 8540.

[117] Testimony of W. Fowler, Executive Director, National Home Study Council, Tr. 9049.

[118] See, e.g., testimony of B. Berwald, attorney, San Mateo Legal Aid, Tr. 3972 at 3981; testimony of S. Soenhel, Attorney, San Mateo Legal Aid, Tr. 3988 at 3997; testimony of K. McEldowney, Tr. 4671 at 4679; testimony of A. R. Fierce, attorney, Cook County Legal Assistance Foundation, Tr. 7271 at 7276, testimony of R. Borden, Tr. 3455.

[119] Testimony of Ray A. Dearing, President, The Central Indiana Better Business Bureau, Tr. 6540.

[120] See, e.g., testimony of O. D. Russell, Associate Superintendent of Public Instruction, State of California, Tr. 4305; testimony of Karen Tomovich, Tr. 4636.

[121] Testimony of Allan R. Fierce, attorney, Cook County Legal Assistance Foundation, Tr. 7271 at 7291.

This same phenomenon occurs at the federal level. The chief collection officer for the Office of Education's Chicago Region testified that when she and others on her staff attempted to collect defaulted loans attributable to students attending proprietary schools, they found widespread and varied claims of misrepresentation concerning all types of schools participating in the Federally Insured Student Loan program--almost all were accredited schools. In addition, she reported that other HEW regions had similar experiences.[123]

Second, the record indicates that whenever an inquiry is made into the nature or source of consumer complaints--no matter how few they are--the results are the same--extensive use of false and deceptive advertising and sales claims. A number of former sales agents and sales managers for major vocational schools have testified to the numerous deceptions they had been induced to use, had taught others, and had learned from their superiors. These individuals often testified that salesmen for most major schools utilized similar practices, and that sales techniques were fairly uniform among these schools since salesmen often moved from school to school. As the record indicates, such tactics are extensive,[124] and thousands of consumers were confronted with these deceptive claims even if only a handful complained.

In other cases where more searching inquiries are made, the frequency of misrepresentation is documented. When government agencies investigate individual schools, widespread deception is often uncovered. Numerous F.T.C. complaints allege patterns of unfair and deceptive practices. The schools involved have been some of the nation's largest.[125] The Post Office has brought numerous actions against schools for postal fraud.[126] HEW's compliance investigations have found numerous consumer protection abuses,[127] and state agencies have brought a number of law enforcement actions.[128] Recently, private class action suits have alleged widespread fraud by several major schools.[129] In each of

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[122] Id.

[123] Testimony of Jan Vogel, Tr. 7758.

[124] See, e.g., testimony of W. Ralston, former sales manager for ICS, Tr. 400; see also Part I, Section V-B, infra.

[125] Since 1973 alone the Commission has issued 20 complaints. Nationwide Training Service, Exhibit C-2814; American Tractor Trailer Training School, Exhibit D-9025; Career Academy, Exhibit C-2546; Commercial Programming Unlimited, Exhibit D-9029; Diesel Truck Driver Training School, Exhibit C-2759; Driver Training Institue, Exhibit D-9060; Electronic (Continued)

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[125] (Continued)

Computer Programming Institute, Exhibit D-8952; Lear Siegler, Inc., Exhibit D-8953; Fuqua Industries, Exhibit C-2626; Control Data Corp., Exhibit D-8940; Lafayette Academy, D-8693; LaSalle Extension University, Exhibit D-5907; MTI Business Schools of Sacramento, Exhibit C-2500; Nationwide Heavy Equipment Training Service, Exhibit C-2759; New England Tractor Trailer Training, Exhibit D-9026; New York School of Computer Technology, Exhibit D-9029; Tri-State Driver Training, 732-3409; Weaver Airline Personnel School, Exhibit C-2638; Worldwide Systems, Exhibit C-2683; Jetma Technical Institute, Exhibit D-9061.

In many of these cases the complainant sought restitution, refunds, or other equitable relief.

[126] *See, e.g.*, several mail fraud indictments of correspondence schools, U.S. Postal Inspector, Exhibit D-110.

[127] *See, e.g.*, "Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program," Office of Education, HEW, Region IV, Atlanta, Georgia (April 1975), Exhibit H-201; audit of Marsh-Draughon student files by Department of Health, Education and Welfare, Region IV, Atlanta, Georgia (May 24, 1974), Exhibit H-192; audit of Alverson-Draughon Business College, Birmingham, Alabama, by the Department of Health, Education and Welfare, Regional IV (December 31, 1974), Exhibit H-193.

[128] *See, e.g.*, comment of William J. Brown, Ohio Attorney General, Exhibit K-860; testimony of A. Epstein, Special Investigator Consumer Protection Division, Attorney General's Office, Tr. 167; testimony of D. Harper, Acting Director Division of Consumer Affairs, New Jersey, Tr. 1530; testimony of L. Glick, Office of the Attorney General of Maryland, Tr. 3018; testimony Diana Woodward, Deputy Attorney General, Division of Consumer Fraud, California Attorney General's Office, Tr. 4460; testimony of Bruce A. Craig, Assistant Attorney General, State of Wisconsin, Tr. 7051; testimony of Beatrice Heveran, Assistant Attorney General, State of Illinois, Tr. 7358; testimony of Lewis Winarsky, Assistant Attorney General, State of Ohio, Tr. 8540.

[129] *See, e.g.*, San Mateo County Legal Aid Society press release:

(Continued)

these instances, the sum of complaints received prior to inquiry were minimal compared to the extent of the misrepresentations found during the investigation.

Throughout the country, whenever a newspaper decides to investigate proprietary vocational schools, major exposes are the result. The Boston Globe investigation unearthed significant abuses in Massachusetts which have led to government reforms and actions against individual schools.[130] The Illinois Governor's Office began an investigation of a random selection of proprietary schools with investigators posing as prospective students. The Office was shocked at widespread deception and misrepresentation beyond all initial expectations.[131] The Chicago Tribune followed up the investigation, uncovering even more abuses, particularly after an investigative reporter posed as a sales agent for a number of major schools.[132] Similar exposes have appeared

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[129] (Continued)

Class Action Consumer Fraud Suit Against Career Academy and U.S. Commissioner of Education (June 26, 1974), Exhibit G-113; Complaint filed against Career Enterprises, Inc. in Superior Court of California and U.S. District Court (Kansas), Exhibit D-266; testimony of John C. Hendrickson, attorney to former Greer Technical Institute students, Tr. 8790; testimony of Sonja Soehnel, attorney, San Mateo Legal Aid, Redwood City, California, Tr. 3988; testimony of Hollis Young, attorney, Boston Legal Assistance Project, Tr. 364.

[130] Boston Globe series on the Proprietary Vocational School Industry in Massachusetts (March 25 - April 3, 1974), Exhibit D-1.

[131] *See*, *e.g.*, testimony of Celia Maloney, Consumer Advocate for the State of Illinois, Tr. 6413; *see also* Exhibit L-84 (appended to Celia Maloney's testimony).

[132] *Chicago Tribune*, Task Force, "Career Schools--Results Seldom Equal Promises," (June 9, 1975-June 12, 1975), Exhibit D-284, *see also* testimony of William Gaines, Investigative Reporter, *Chicago Tribune*, Tr. 7017.

in the press in San Francisco,[133] Washington, D.C.[134] and elsewhere throughout the nation.[135]

Perhaps even more telling are the substantial drop-out rates and low placement rates throughout the industry. As we detail in a subsequent section, not only are drop-out rates very high, but many students drop out extremely early in the course, indicating that for many the course may not have been as expected.[136] While drop-out rates are generally high, for a number of courses they are unusually high--indicating a strong likelihood of sales abuses in those schools.[137]

Similarly, continued widespread advertising concerning job and earnings potential[138] in the face of low placement rates[139], indicates that numerous misrepresentations about students' placement success are occurring.

Thus, while the rulemaking record provides extensive actual documentation of misrepresentations, these individual reported instances can be viewed as the tip of the iceberg. An examination of sales practices, drop-out and placement rates, and in-depth investigations leads staff to conclude that behind every reported complaint are numerous other cases of unfair and deceptive practices. This is not surprising considering the existing regulatory framework[140] and the degree to which existing refund policies create incentives to engage in abusive enrollment practices.[141]

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[133] *See, e.g.*, testimony of K. Higgins, former reporter, San Francisco Bay Guardian, Tr.4077; "Bitter Lessons of Vocational Schools," K. McEldowney and K. Higgins, Exhibit D-236.

[134] "Hard Sell on Job Training," *Washington Post*, Exhibit C-39; series of four articles on vocational schools, Carl Bernstein, *Washington Post*, Exhibit D-69.

[135] *See, e.g.*, Mitford, Jessica, "Let Us Now Appraise Famous Writers," *Atlantic Monthly*, (July 1970), pp. 45-54, Exhibit D-68; Patricia Fanning,"Costly 'Education'," *National Observer* (February 15, 1975), Exhibit D-269; "The Education Hucksters," *Caveat Emptor, The Consumer Protection Monthly* (September 1974), Exhibit E-50; Peter Cowen, "Why Johnny Can't Work: The Robbery Factor," *The Washington Monthly* (1974), Exhibit E-157; "Correspondence Schools and the Military Market," *Stars and Stripes* (November 1973), Exhibit E-51; "Coastway American System--How a Truck Driving School Promises and Promises..," *Overdrive* (August 1973), Exhibit D-37; "Schools for Truck Drivers: Most Firms Train Their Own," David Hammer, *Burlington County Times* (October 11, 1974), Exhibit D-316; Carper, "Career Schools Aren't Always

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[135] (Continued)

What They Claim", Reader's Digest (June 1974), Exhibit B-9; "Beware of fradulent truck-driving schools," The Cincinnati Post (October 29, 1972), Exhibit D-91; "Many Computer Schools Charged With Offering a Useless Education," Wall Street Journal (June 10, 1970), Exhibit E-27; Marian Ottenberg, "Pay and Be Assured a Government Job?," The Washington Star (April 16, 1972), Exhibit D-309.

[136] *See* Sections VI-A(1), (2) and (3), *infra*.

[137] *See* Section VI-A(1) and (3), *infra*.

[138] *See* Part I, Section IV-B, *supra*.

[139] *See* Part I, Section VII-D, *infra*.

[140] *See* Part I, Section VIII, *infra*.

[141] *See* Part I, Section VI, and Part II, Section IV-E, *infra*.

V. Commissioned Sales Representatives and Sales Techniques

A. Introduction

The proprietary vocational school industry employs thousands of commissioned salesmen to obtain a substantial portion of enrollments in vocational schools. While these salesmen usually enter the consumer's home to make their sales, they can also appear in the school under the rubric "admissions officer" or "counselor." In either case, the sales presentation consists of the use of numerous oral and written misrepresentations, obligating the consumer on the spot for a major financial expenditure for a course the student and the salesperson may know little about. Not only do the consumer and salesperson know little about the course content, graduation rates, placement rates, or refund and cancellation policies, but also neither can evaluate, after just a brief high-powered sales presentation, whether the student really should devote time and money to the particular career field he has signed for.

This Section will describe how the recruitment, training, compensation, surpervision, and turnover rate of proprietary school sales forces encourage the widespread use of unfair and deceptive enrollment techniques. An analysis of the type of sales presentations commonly used, including the use of the negative sell and the availability of federal monies, will follow. The Section will conclude with a discussion of several issues pertinent to the proposed Rule--the ability of sales personnel to nullify the impact of mandated affirmative disclosures, and the propriety of a salesperson with no background in education or counseling enrolling consumers in costly educational courses purporting to lead to lifetime careers.

Obviously, an industry with 7000-8000 members is not going to have uniform selling techniques. Some schools sell only through the mails, others sell only at the school, while others prefer selling in the home. This Section will deal primarily with those techniques which the record shows to be both abusive and widespread not only in terms of the number of schools which use them but also the number of consumers affected. Thus, this Section will deal primarily with sales practices that are almost universally employed by most major, proprietary schools. These major schools and chains of schools enroll a significant proportion of all students. For example, of approximately 1,000,000 students enrolled by NHSC member schools during one recent year, 768,000 or 76.8 percent were enrolled by the 10 largest schools.[1]

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[1] Annual Reports submitted by NHSC member schools for 1973, Exhibit B-29. The 10 largest NHSC member schools by number of enrollments from data in Exhibit B-29 are:

(Continued)

As will be shown, each of these 10 schools relies to a great extent on the type of sales techniques to be described below.

Much the same pattern is revealed by the data available for residential schools who are members of AICS. Of over 430 AICS schools, 74.3 percent use "field representatives,"[2] most of whom are commissioned. Moreover, the 74.3 percent of AICS schools employing salespeople enroll over 80 percent of all students enrolled in AICS members' schools.[3] An examination of schools accredited by NATTS demonstrates similar results.[4] While the discussion which follows concerning the sales tactics employed by commissioned salespeople is geared toward the practices of the larger schools, such as the NHSC schools noted above and the large chains of residential schools, many of the practices discussed--the impact of commission compensation schemes,[5] elements of the negative sell such as claims of selectivity,[6] and enrollment limitations[7]--are equally applicable to all schools employing commissioned salesmen, by whatever name they are called.

Many of the major schools display a remarkable similarity in sales techniques. In part, such a similarity is dictated by the fact that many of the same salespeople have worked at one time or another for several of the major correspondence and residence schools. These salespeople have testified that the practices

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[1] (Continued)

1. Advance Schools
2. American Schools
3. Bell & Howell Schools
4. Cleveland Institute of Electronics
5. Commercial Trades Institute
6. International Correspondence Schools
7. LaSalle Extension University
8. McGraw-Hill
9. Technical Home Study Schools
10. Universal Training Service

[2] Annual reports submitted by AICS member schools, Exhibit B-31. Enrollments compiled for full-time students.

[3] *Id.*

[4] Examination of question 38 of NATTS self-evaluation reports concerning the use of field representatives indicates that most, if not all, use some variety of salesmen, Exhibit F-64.

[5] *See* Part I, Section V-B, *infra*.

[6] *See* Part I, Section V-C(2), *infra*.

[7] *Id.*

of all the schools they worked for are essentially the same and that they used techniques developed while selling for other schools.[8]

While these fairly uniform sales tactics are in widespread use today, if they are left unchecked, there is a potential for such methods to become ever more prevalant. The success of these methods in enrolling students and the prevalence of sales personnel knowledgeable as to their use leads to the significant potential that this approach will remain an active ingredient in schools' enrollment techniques.

B. Turnover, Recruitment, Training, Compensation and Supervision

Numerous characteristics of the manner in which vocational school salespeople are recruited, trained, compensated and controlled, contribute to their motivation to use unfair or deceptive enrollment practices. As we describe in this section, the record demonstrates that:

(1) Many schools have a high turnover rate among their sales forces, with the result that many salespeople are either inexperienced or have worked for many schools. These salespeople never become fully familiar with the content of the school's course.

(2) Sales representatives are frequently hired indiscriminately with the greatest attention given to their ability to sell. No consideration is given to their ability to counsel a prospective student in making a wise educational and career choice.

(3) The training most sales representatives receive is geared solely to how to make a sale--usually through a "canned" sales presentation. Often the salespeople never learn about the course they are selling, the career field they are portraying, or the school they are representing.

(4) Salespeople work under the "carrot" of commissions and the "stick" of quotas, often under strong pressures to produce enrollments no matter what the student's needs and capabilities are and no matter what methods are used to make the sale.

(5) Sales management, also operating under the same incentive schemes, encourages, rather than controls, sales abuses.

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[8] See text at notes 11 and 12, infra.

(6) Many of the schools themselves, by their hiring, training, compensation schemes, canned sales presentations, and other actions, display an intent to enroll, by any means necessary, anyone who will pay or sign a contract.

1. Turnover

Former vocational school salespeople and sales managers have confirmed the existence of an incredibly high turnover rate among sales personnel,[9] with some estimates ranging as high as 90 percent annually.[10] The tremendous horizontal mobility of the salespeople in this industry explains in part the comparative uniformity in both the residential and home study sectors and from school to school in the use of the "negative sell"[11] and the making of numerous comparable misrepresentations. The connection between the high turnover rate among salespeople and pervasiveness of sales abuses was explained by one former sales manager:

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[9] *See, e.g.*, testimony of H. Chambers, District Manager for LaSalle Extension University, Tr. 1962; statement of Gerry S. Mussells, former vocational school salesman (September 23, 1974), Exhibit E-213; statement of Roland E. Lopez, former salesman, Atlantic Schools, Bryman Schools, LaSalle, Jetma (January 27, 1974), Exhibit E-206. In a study of agent turnover conducted by the Indiana Private School Accrediting Commission, Joseph A. Clark, Commissioner, the following conclusions were reached:

> The seven schools (Lincoln Tech, Bryman School, Elkhart, Ind. Col., ITT Tech, ICS, [International Correspondence Schools], and LaSalle) have an average yearly agent void rate of 42.48%. With LaSalle not figured into the average it is only 37.9% about 4.6% over 1/3 of their agents. LaSalle has an individual rate of 69.6%, about 3% over 2/3 of their agents. Note that these seven schools listed here are both *residential* and *home study* and that the majority are *accredited*.

Letter from Joseph A. Clark, to Jerome Lamet, Chicago Regional Office F.T.C., June 17, 1975.

[10] *See, e.g.*, statement of Roland E. Lopez, former vocational school salesperson (Atlantic Schools, Bryman School, LaSalle, Jetma) (January 27, 1976), Exhibit E-206.

[11] *See* discussion of the "negative sell" at Part I, Section V-C(2), *infra*.

> In the period that I was with ICS [International Correspondence Schools] I had under my control, at one time or another, several hundred salesmen. There were very few of these salesmen that came with ICS who had not been with one or more, and generally with more than one other home study school. So that they were bringing techniques from one school to another.
>
> It's very simple procedure to go from ICS to LaSalle, from LaSalle to Bell & Howell, from Bell & Howell to you name it home study school. And they all use--at least those that I have knowledge of all-- all use the hard negative sell.[12]

2. Recruitment

In the usual setting the proprietary school salesperson has been recruited through the use of classified advertising[13] or through monetary incentives offered present salesmen to recruit other salesmen.[14] Schools hire their sales agents indiscriminately or--if some standard is used--it is the individual's

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[12] Testimony of W. Ralston, former salesperson, Famous Schools, ICS, Bell and Howell Schools, Tr. 400.

[13] As a result of the high turnover of salespeople, the hiring process appears to be almost continual. See, e.g., testimony of A. Edelman, former director, private business school, Tr. 1606; testimony of B. Lewis, President of Lewis, Weinberger, Tr. 2213; "Complaint of Unfair and Fraudulent Business Practices as Practiced by: American Training Services," Clement J. Canja, former ATS salesmen, with six statements re: dissatisfied students and ATS salesmen's manual, Exhibit D-293; LTV Educational Systems (Ling-Temco-Vought), sales training manuals (1970), Exhibit E-15; International Correspondence Schools' materials, Exhibit E-24; North American Correspondence Schools, sales training manual (January 1972), Exhibit E-26; LTV Sales Materials, Policy and Advertising, Exhibit E-36; Computer Learning Center advertisement for salesmen, The Washington Post (December 9, 1974), Exhibit E-148; statement of Gerry S. Mussells, former vocational school salesman, (September 23, 1974), Exhibit E-213.

[14] One very large school, Bell & Howell Schools, offered a cash bonus to its salespeople for recruiting other sales personnel who produced enrollments. See Bell & Howell Schools, correspondence to all IAS Representatives (June 6, 1973), Exhibit E-1. The letter states:

(Continued)

ability to sell.[15] Screening for individuals of questionable character is virtually non-existent.[16] Major vocational schools have admitted that their sales representatives have no background in education, counseling, or related areas.[17] Indeed, some former sales managers have testified that they would not even consider hiring a salesperson who expressed concern for the welfare of prospective students:

> They would be more interested in someone's welfare as opposed to interested [sic] in making a living for themselves, making enrollments for the school.
>
> Someone who is really interested in another individual's welfare--He would perhaps find that the individual couldn't afford the course, and, therefore, you are prone not to enroll them, which is what we don't want.[18]

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[14] (Continued)

> You provide us with the name, address and telephone number of a friend or relative who is interested in representing us in the field. If we hire him and he works out, we will pay you on the following schedule:
>
> > If he produces 26 serviceable enrollments within the first 90 days, you will receive--$150.00.
> >
> > If he produces 35 serviceable enrollments within the first 90 days, you will receive--$200.00.

[15] See, e.g., statement of Roland E. Lopez, former vocational school salesman (Atlantic Schools, Bryman School, LaSalle, Jetma) (January 27, 1975), Exhibit E-206; testimony of H. Chambers, district manager for LaSalle Extension University, Tr. 1962.

[16] See, e.g., op. cit., E-206.

[17] See, e.g., testimony of Robert A. Barton, President, LaSalle Extension University, Tr. 8052 at 8129; testimony of Richard W. Kislik, President and Chairman of the Board of Intext, Inc. (ICS), Tr. 6755 at 6778.

[18] See, e.g., testimony of R. Foss, ex-sales representative, Tr. 614.

3. Training

Once an individual is hired--almost invariably with no background in education--the school trains the sales agent in how to make a sale, but provides little or no information on how to discuss the substance of the education the school purports to offer. The training given the salespeople centers mainly on memorizing canned sales pitches or learning the fundamentals of the negative sell.[19] The sales agents possess little or no knowledge of the school's drop-out or placement rate.[20] Little is known about the course itself or the labor market for the vocational field being sold. Accordingly, the consumer's sole basis for deciding to enroll in a particular course and choosing a particular career is often derived from communications with an ill-informed sales agent whose only real expertise is in selling, and whose only real goal is to make the sale.[21]

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[19] *See e.g.*, testimony of M. Cohen, salesman, American Training Service, Tr. 2213; testimony of H. Holley, Security Officer, Monumental Properties, Tr. 2751; testimony of R. Foss, ex-sales representative, Tr. 614; LTV Educational Systems (Ling-Temco-Vought), sales training manuals (1970), Exhibit E-15; LaSalle Extension University, The Qualifying Interview Workbook, Exhibit E-25; North American Correspondence Schools sales training manual (January 1972), Exhibit E-26; statement by Stephen P. Warden, former salesman, Career Academy and ECPI (September 17, 1974), Exhibit E-173; testimony of P. Farnum, salesman, Lafayette Academy, Tr. 2859; testimony of Warren Randolph, salesman, Weaver Airline Personnel School, ITT Tech Institute, Lafayette Academy, Tr. 450; testimony of A. Goldberg, salesman, American Motel School, Tr. 2799.

[20] *See*, *e.g.*, statement of Darell C. Balsham, Area Manager, CREI, page 5, Exhibit E-139; testimony of Arnold Goldberg, former salesperson for American Motel School, Tr. 2799 at 2803; testimony of Wallace Kelley, former salesperson for Jetma Technical Institute, Tr. 3417 at 3438; testimony of Robert Zeperwich, former salesperson for North American School of Conservation and Ecology, Tr. 3921 at 3940; testimony of Roland E. Lopez, former salesperson for Jetma Technical Institute, Atlantic, Bryman Schools, Ryder, Tr. 4533 at 4536; statement of S. Waiden, former salesperson for Career Academy and ECPI, Exhibit E-173; statement by Stephen D. Warden, former salesperson, Career Academy and ECPI (September 17, 1974), Exhibit E-173.

[21] *See* Part I, Section III-G, *supra* and Sections VI-A(4) and VII-B, *infra*.

4. Compensation

The salesperson's compensation structure is integral to incentives in enrolling students. School officials claim that the compensation schemes employed for their sales agents are designed to encourage the enrollment of only those qualified students likely to remain in school.[22] The record clearly shows otherwise.

The three major components of the typical compensation scheme involve:

1. payment by commission,
2. use of contests and bonuses, and
3. use of quotas.

From the salesperson's perspective, the monetary incentives clearly encourage the enrollment of every prospect whose signature can be obtained.[23] While in some compensation schemes the salesperson may benefit to a greater degree if the student remains enrolled for a longer period of time, the critical factor is that the agent benefits financially even if a student attends only one class or submits one lesson, while nothing is received if the consumer does not enroll.

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[22] For example, one owner of a large home study school stated:

> Potential sales representatives are interviewed twice. Their last employer is contacted. Virtually all at ICS are married, have children and reside in the community in which they serve.... It is important to understand that the sales-agents and the sales management compensation is directly related to the student remaining active. Therefore, both ICS and its sales personnel are interested in motivated students, not sheer numbers.

Testimony of R. Kislick, President and Chairman of the Board, Intext, Inc., Tr. 1819.

[23] See, e.g., testimony of Wallace Kelley, former salesperson, Jetma, Tr. 3420; testimony of Anthony DeTore, former salesperson for Bell & Howell, Tr. 5235; testimony of Roland E. Lopez, former salesperson for Atlantic, Bryman Schools, Jetma, Ryder, Tr. 4537.

The most frequently employed compensation scheme calls for the payment of a percentage of the tuition to the salesperson upon obtaining the enrollment.[24] The commission payable to the salesperson often increases with the amount of time the student remains active.[25] However, under each and every compensation scheme contained in the record, once the three-day cooling-off period has expired, and the enrollee has become financially obilgated in some fashion to the school, the salesperson is entitled to retain some amount of the commission.[26] Thus, the most profitable course for the salesperson to follow is to enroll everyone he contacts. Even if the salesperson is aware that a prospect will subsequently drop out, so long as the salesperson has obtained a downpayment he will be better off than not enrolling the prospect at all.[27] It is little wonder, then, that former sales agents have testified that they will attempt to enroll everyone they interview, regardless of qualifications.

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[24] For schools using commission-based compensation schemes, see, e.g., AICS--photocopied material from most recent annual report submitted by member schools, Exhibit B-31; National Home Study Council--Self-Evaluation Reports and Chairman's letters, material subpoenaed on August 14, 1974, Exhibit F-64; NHSC-photocopied material from most recent annual reports submitted by member schools, Exhibit B-29; testimony of W. Ralston, ex-salesperson, Bell & Howell Schools, ICS, Famous Schools, Tr. 400; statement of Roland E. Lopez, former vocational school salesman (Atlantic Schools, Bryman School, LaSalle, Jetma) (January 27, 1975), Exhibit E-206; "The Education Hucksters," Caveat Emptor, The Consumer Protection Monthly (September 1974), Exhibit E-50; "Complaint of Unfair and Fraudulent Business Practices as Practiced by: American Training Services," Clement J. Canja, former ATS salesmen, with six statements re: dissatisfied students and ATS salesmen's manual, Exhibit D-293.

Testimony of R. Kislick, President and Chairman of the Board, Intext, Inc., Tr. 1819; testimony of G. Boros, salesman, CIE, Tr. 1457; Elkins Institute Sales Commission Pay Plan, Exhibit E-208; Salesmen's Commission, A. Venzara, Key Training Service, Exhibit E-43; memos, contracts, and standards relating to sales representatives, American Motel School, Inc., Roanoke, Va., Exhibit E-226; statement of Darell C. Balsham, Area Manager, Capitol Radio Engineering Institute, a division of McGraw-Hill Continuing Education Center (November 15, 1974), Exhibit E-139; Bell & Howell school materials, Exhibit E-1; op. cit., Tr. 1819; testimony of H. Holley, Security Officer, Monumental Properties, Tr. 2751; testimony of H. Chambers, District Manager for LaSalle Extension, Tr. 1962; testimony of M. Cohen, salesman, American Training Service, Tr. 2213; testimony of P. Farnum, salesman, Lafayette Academy,

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24 (Continued)

Tr. 2859; letter from P.W. Welch, Jr., Consumer Protection Specialist, Monterey County Department of Weights, Measures and Consumer Affairs, Salinas, California, to R. Sneed, F.T.C. SFRO (August 6, 1974), Exhibit E-130; statement by Stephen D. Warden, former salesman, Career Academy and ECPI (September 17, 1974), Exhibit E-173; testimony of G. Gustafson, former saleswoman, Virginia Computer College, Tr. 2581; testimony of P. Farnum, salesman, Lafayette Academy, Tr. 2859; testimony of A. Goldberg, salesman, American Motel School, Tr. 2799; LTV Education Systems, Inc., Sales Directions and Manual, 1971, Exhibit E-204; Study of Operations and Administration of Private Trade and Correspondence Schools, Texas Education Agency (February 1963), Exhibit C-3; testimony of D. Jackson, Chairman of United Schools of Knoxville, Tr. 2431; affidavit of Richard J. Zaiden, Jr., President and principal stockholder of Technician Training School, McKees Rocks, Pennsylvania (signed October 1974), Exhibit A-45; Wayne School advertisement in *Hulk and Sub-Mariner*, Marvel Comics (1974), Exhibit E-145; transcripts of hearings in the matter of Weaver Airline Personnel Schools, Inc., *et al.*, Docket No. 732-3167, F.T.C. Kansas City Regional Office, (October-November 1972), Exhibit E-158; testimony of A. Edelman, former director, private business school, Tr. 1606.

Under compensation schemes such as those noted above, the maximum commission payable usually falls in the range of 10 to 20 percent of the total contract price. *See*, *e.g.*, *op. cit.*, Exhibit E-208 (12%); *op. cit.*, Exhibit E-24 (16%); *op. cit.*, Exhibit E-43 (16%); *op. cit.*, Exhibit E-226 (16%); *op. cit.*, Exhibit E-139 (20%); *op. cit.*, Exhibit A-45 (10%).

However, other factors affect the amount actually realized by the salesperson. A system of "charge-backs" is utilized to adjust the commission earned by the salesperson. For example, if the check written by the enrollee is returned for inadequate funds, if a FISL loan fails to materialize, or if a student withdraws from the school and a refund must be made, the accrued commission is adjusted downward to account for these factors. *See*, *e.g.*, *op. cit.*, Exhibit E-208; *op. cit.*, Exhibit E-24; *op. cit.*, Exhibit E-43; *op. cit.*, Exhibit E-226; *op. cit.*, Exhibit E-139; *op. cit.*, Exhibit A-45. To facilitate this process of adjusting accrued compensation, some schools require that a portion of the commission earned be held in a reserve account. *See*, *e.g.*, *op. cit.*, Exhibit E-24. In the event that a charge-back is necessary it can be easily set off against this reserve account.

25 The commission is paid in a number of installments to the salesperson. The salesperson is usually entitled to 50 percent or more of the down payment secured from the students,

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[25] (Continued)

up to the maximum allowable commission. *See*, *e.g.*, testimony of G. Boros, salesperson, CIE, Tr. 1457; "Complaint of Unfair and Fraudulent Business Practices as Practiced by: American Training Services," Clement J. Canja, former ATS salesmen, with six statements re: dissatisfied students and ATS salesman's manual, Exhibit D-293. Thereafter, the salesperson receives the balance of his commission from the succeeding payments made by the student. For example, one large correspondence school pays its sales force 50 percent of the down payment plus 10 percent of each successive payment until the total commission has been paid. *See* Salesmen Commission schedule, Key Training Service, Miami Beach, Florida (June 8, 1970), Exhibit E-43.

[26] *See*, *e.g.*, statement of Roland E. Lopez, former vocational school salesman (Atlantic Schools, Bryman School, LaSalle, Jetma) (January 27, 1975), Exhibit E-206; affidavit of Richard J. Zaiden, Jr., President and principal stockholder of Technician Training School, McKees Rocks, Pennsylvania, (signed October 1974), Exhibit A-45. (Salesperson received 80 percent of first payment. Even if the student drops out, the salesperson keeps the commission.)

[27] Examination of the specifics of the commission payment plans cited above reveals that for each plan, the salesperson is entitled to a portion of the money received by the school from the enrollee. Thus, while it may be more profitable in theory for the salesperson if all students remain enrolled, it clearly is more profitable for the salesperson to enroll a prospect who is likely to drop out than not to enroll the prospect at all. This attitude of random recruitment is often reflected in substantial drop-out rates. *See* Part I, Section VI, *infra*.

In conjunction with the commission schemes employed, schools often utilize bonuses, contests and prizes to encourage their sales force to enroll more applicants. Many of the major vocational schools employing commissioned sales agents grant bonuses for obtaining large down payments or exceeding their sales quotas.[28] The bonuses paid to sales agents for obtaining large amounts of money early in the transaction clearly provide a monetary incentive to the salespeople to enroll as many prospects as possible and to insure that they survive the cooling-off period.

Another financial incentive which operates in much the same manner is the use of sales contests.[29] As was shown to be the case with commissions and bonuses, contests and the benefits they offer their sales force frequently motivate the salespeople to enroll indiscriminately.[30] Former salespeople testified that enrollment contests were almost continuous.[31] A former salesperson for LaSalle Extension University demonstrated the impact that contests can have on the enrollment process:

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[28] See, e.g., Elkins Institute Sales Commission Pay Plan, Exhibit E-208; International Correspondence Schools materials, Exhibit E-24; LTV Educational Systems (Ling-Temco-Vought), sales training manuals (1970), Exhibit E-15; testimony of G. Prichett, President, North Carolina Association of Business Schools, Tr. 2810; testimony of W. Ralston, ex-salesman, Famous Schools, ICS, Bell & Howell, Tr. 400; statement of Roland E. Lopez, former vocational school salesman (Atlantic Schools, Bryman School, LaSalle, Jetma) (January 27, 1975), Exhibit E-296; testimony of G. Boros, salesman, CIE, Tr. 1457; Bell & Howell School Materials, Exhibit E-1; testimony of H. Chambers, District Manager, LaSalle Extension University, Tr. 1692. For example, one such bonus arrangement pays the salesperson 10 percent of the down payment obtained if the down payment falls within a set percentage of the total contract price. An additional $25 to $40 bonus is awarded the salesperson for obtaining the total contract price at the time of sale. op. cit., Exhibit E-24.

[29] Examples of such contests can be found at: testimony of W. Ralston, ex-salesperson, Famous Schools, ICS, Bell & Howell, Tr. 400; statement of Roland E. Lopez, former vocational school salesman (Atlantic Schools, Bryman School, LaSalle, Jetma) (January 27, 1975), Exhibit E-206; testimony of H. Chambers, District Manager for LaSalle Extension School, Tr. 1962; Bell and Howell Schools materials, Exhibit E-1; International Correspondence Schools, Exhibit E-24; memo from Regional Manager to all sales representatives, Bell and Howell Schools (December 11, 1974), Exhibit E-176; LTV Educational Systems (Ling-Temco-Vought), sales training manuals (1970), Exhibit E-15; testimony of H. Holley, Security Officer, Monumental Properties, Tr. 2751; "The (Continued)

29 (Continued)

Education Hucksters," Caveat Emptor, The Consumer Protection Monthly (September 1974), Exhibit E-50. In addition to the incentives provided through the prizes awarded, the evidence demonstrates that considerable pressure is applied by the sales managers to increase enrollments during these contests. See, e.g., op. cit., Exhibit E-1.

30 See, e.g., testimony of Wallace Kelley, former salesperson, Tr. 3439; testimony of Anthony DeTore, former salesperson for Bell & Howell, Tr. 5235.

31 One salesperson testified on the seemingly endless string of contests at his school:

> My school had a "three times a charm" award, $1,500, an April Showers Contest, $1,500, energy bonus, up to $150 worth of gasoline. A fast start contest, I think that paid $1,500. And so many points for every enrollment. Make a big contest, $2,000 bonus in conjunction with another contest. A tournament of champions contest and a Roman States contest, up to $1,500, a savings bond contest, a portable T.V. contest, a Super Chef steak contest where you could earn up to as many as 72 steaks if you got two enrollments or more.
>
> We had a green stamp contest, believe this or not you could earn up to 300,000 stamps or 250 books by putting bodies on the payroll. A free auto contest, you go three-leaders [sic] in three divisions got a $3,000 automobile. Ad naseum, [sic] it goes on and on, and it is repugnant and repulsive.

Testimony of G. Boros, salesperson, CIE, Tr. 1457.

> ...LaSalle during one year, they were giving away a brand new Cadillac, and this was for the most sales that year. As I remember the fellow that won it, quit right after winning it because he went out and enrolled everyone he could get his hands on, returned a fabulous amount of sales. So, of course, he won this big Cadillac, and then, when all the people just dropped out, he was gone.[32]

Once again, the overriding consideration is that the salesperson benefits financially--whether or not the student remains enrolled. This form of incentive flies in the face of the schools' claims of selective enrollment practices.[33]

However, the incentives offered salespeople represent only half the picture. In addition to the incentives, schools frequently enforce a system of mandatory sales quotas. The operation of such quotas is relatively simple. If the salesperson does not produce the requisite amount of enrollments, the salesperson loses the job. Employment contracts utilized by the schools are the typical vehicle by which such quotas are imposed.[34] One school's Personnel Manual sets forth the following typical quota:

> Quotas. Sales representatives shall be advised of the minimum weekly quotas.
>
> A. Adult Sales - 6 enrollments per week.
> B. High School Senior Sales - 4 enrollments per week.

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[32] See e.g., testimony of H. Chambers, district manager, LaSalle Extension University, Tr. 1962.

[33] Almost every proprietary school claims to have rigorous pre-enrollment screening to discover if applicants are qualified. See Self-Evaluation Reports of NATTS schools, AICS schools, and NHSC schools, Exhibits F-61, C-37 and F-64, respectively.

[34] See, e.g., Atlantic Schools materials, Exhibit E-14; McGraw-Hill, miscellaneous catalogs for NRI (National Radio Institute) and CREI (Capital Radio Engineering Institute), Exhibit D-53; testimony of H. Holley, Security Officer, Monumental Properties, Tr. 2751; testimony of W. Gilpin, Regional Marketing, Spartan School of Aeronautics, Tr. 3037; Bell and Howell School materials, Exhibit E-1; memo from Regional Manager to all sales representatives, Bell and Howell Schools (December 11, 1974), Exhibit E-176; LTV Sales materials, Policy and Advertising, Exhibit E-36; LTV Educational Systems (Ling-Temco-Vought), sales training manuals (1970), Exhibit E-15; testimony of P. Farnum, salesperson, Lafayette Academy, Tr. 2859.

C. Canvasser - 4 enrollments per week.
D. Termination - when quota is not maintained.[35]

The internal correspondence of the schools placed in the record as well as the testimony of former sales agents reflect the extent of the pressure and threats which surround the quota system. The "produce-or-else" attitude which pervades this industry virtually forces salespeople to enroll unqualified students.[36] Moreover, the threat of firing for not meeting quotas is even more severe because a salesperson often not only loses a job, but also forfeits large amounts of accrued commissions. This is so because some schools condition receipt of accruals on continued employment with the school.[37] Of course, if the sales representative can only get the accrued commissions if the individual remains employed by the school, the sales agent will be sure to meet whatever quotas are set by the school, in order to stay employed.

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[35] LTV Sales materials, Policy and Advertising, Exhibit E-36.

[36] One former salesperson described the pressure created through quotas:

> A commission man, especially an inexperienced commission man, works in desperation. Especially if he has a family, he wonders if he is going to be able to operate the next day or next week. Certainly this brings about a situation where he is not going to be as selective as he should be, as he really should be. He is going to lose the initial purpose of why he is there to help this person and he is going to have one thought in his head, get the enrollment and go.

Testimony of H. Holley, former salesman, ICS and United Electronics School, Tr. 2751. See also memo from Regional Manager to all sales representatives, Bell and Howell Schools, (December 11, 1974), Exhibit E-176; Bell and Howell Schools materials, Exhibit E-1; LTV Sales materials, Policy Advertising, Exhibit E-36; Atlantic Schools materials, Exhibit E-14; LTV Educational Systems (Ling-Temco-Vought), sales training manuals (1970), Exhibit E-15.

[37] See, e.g., Bell and Howell School materials, Exhibit E-1; "Complaint of Unfair and Fraudulent Business Practices as Practiced By: American Training Services," Clement J. Canja former ATS salesmen, with six statements re: dissatisfied students and ATS salesmen's manual, Exhibit D-293; International Correspondence Schools, Exhibit E-24. For example, Bell and Howell salespeople are bound by the following
(Continued)

Even if sales agents are not working on a strict commission basis, the school can bring intense pressures for them to produce. The mere fact that a particular school uses a salary payment scheme does not alleviate the problem totally. In most instances such salary plans are accompanied by either a form of commission bonus, or a quota system.[38] As one salesperson stated:

> Salary relieves the pressure to a degree, but this is a misconception also because, let us face it, unless you produce those quotas or satisfy for the office or district when it gets to the main office, you are not going to be drawing that salary that long anyway.[39]

Moreover, schools have done little to prevent abuses that arise from this system of quotas, commissions, bonuses and contests. Indeed, the financial incentives of those charged with the responsibility for overseeing the actions of salespeople within the schools

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37 (Continued)

forfeiture provision:

> Termination of the Representative's employment with the company will cause this [compensation] schedule to be cancelled and no amounts will be considered earned or accrued after the last day of active employment, as shown by Company records, unless termination is for one of the following reasons:
>
> A. Death
> B. Retirement
> C. Permanent Total Disability

[38] See, e.g., testimony of G. Gustafson, former salesperson, Virginia Computer College, Tr. 2581; testimony of G. Prichett, president, North Carolina Association of Business Colleges, Tr. 2810; testimony of J. Goss, teacher, administrator, recruiter, READAC Reading Services, Tr. 2872; testimony of E. Axelrod, S. Long, Vice Presidents, Washington School for Secretaries, Tr. 3125; Study of Operations and Administration of Private Trade and Correspondence Schools, Texas Education Agency (February 1963), Exhibit C-3; Weaver Airline Personnel School salesmen's manual with sales scripts, Exhibit E-107.

[39] See, e.g., testimony of H. Holley, Security Officer, Monumental Properties, Tr. 2751.

themselves have exactly the opposite effect--*i.e.*, they cause such supervisory personnel to ignore, if not actually encourage, misrepresentations by their sales forces. Typically, supervisory personnel receive an "override" on the commissions earned by the salespeople under them.[40] The arrangement usually calls for the sales manager to receive a fixed percentage of the total cost of the course for each course sold by a salesperson in the manager's employ.[41] Thus, the incentives are virtually identical for both the salesperson and the manager since both stand to make something from each and every enrollment.

It is not by chance that sales agents' incentives are to enroll anyone by any means. The schools themselves develop the commission and quota systems for salespeople and managers, the schools develop hiring and training policies, and it is the schools that develop canned sales presentations. Schools are embarking on this sales approach purposively and with full knowledge of the consequences.[42]

Numerous former salespeople and sales managers testified that any discouragement of unfair or deceptive enrollment practices was purely pro forma, and that frequently those charged with controlling salespeople encouraged questionable representations.[43]

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[40] *See*, *e.g.*, Sales Manual, LTV Educational Systems, Inc., Sales Managers Compensation and Duties, Exhibit E-204; Elkins Institute Sales Commission Pay Plan, Exhibit E-208; International Correspondence Schools, Division Manager Override Schedule, Exhibit E-24; testimony of Harold Chambers, former sales manager, LaSalle Extension University, Tr. 1962.

[41] While the compensation schemes vary, they all call for the manager to receive a set percentage of the commission earned by the salesperson. *See*, *e.g.*, note 24 *supra*: LTV Education Systems, Inc. pays one percent; Elkins Institute pays four percent; ICS pays in excess of six percent; and LaSalle pays three percent.

[42] *See*, *e.g.*, Evaluation LTV Education Systems, Inc. Proprietary Schools, O.E., BHE, SFA, School Investigation Report, Exhibit E-16.

[43] *See*, *e.g.*, testimony of Wallace Kelly, former salesperson, regional sales manager, national manager, and sales trainer, Famous Schools, ECPI, and Jetma Technical Institute, Tr. 3417 and 3440; testimony of G. Gustafson, former salesperson, Virginia Computer College, Tr. 2581; testimony of Robert Zepernick, former salesperson, North American School of Conservation and Ecology, Tr. 3921 and 3940; testimony of W. Ralston, former sales manager for Bell & Howell, Tr. 100, quoting from Bell and Howell sales manual he stated "If what we say here doesn't work, do whatever you have to to get the enrollment."

Written admonitions to tell the truth to the contrary notwithstanding, the very structure of the sales organizations offers financial incentives to recruit randomly and utilize false, deceptive and unfair representations and sales methods.[44] Despite the documented widespread evidence of misrepresentations and enrollment abuses,[45] the record contains little or no evidence that schools terminated salesmen engaging in such abuses.[46] Rather, termination appears to be a sanction invoked only when a salesman fails to make enough sales.[47]

C. Selling Techniques

The recruitment, retention, training, compensation and supervision of salespeople would predict extensive sales abuses. Thus it is not suprising that an analysis of the practices commonly used by many vocational school salespeople confirms this finding.

1. Leads and the Sales Introduction

The sales process starts when the salesperson obtains "leads" on prospective students. As used within the industry, a "lead" is the name of a person, as yet uncontacted, who might potentially be enrolled. Two types of "leads" are generally differentiated--those provided by the school[48] and those developed by the salesperson.[49] Leads are generated in many ways but the most common approach is to use advertising and other printed materials--which we have previously described to include numerous misrepresentations[50]--which ask the reader to call, write, or visit the school.[51]

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[44] See discussion of sales managers' compensation schemes at notes 40 and 41, supra.

[45] See Part 1, Sections IV, supra and V-C, infra.

[46] See, e.g., testimony of R. Foss, former salesman and sales manager, ICS and Famous Schools, Tr. 614.

[47] See, e.g., testimony of Roger T. Osenbaugh, former sales manager, Bell and Howell, Tr. 6044; testimony of Anthony DeTore, former salesperson, Tr. 5219 and 5237.

[48] Many schools' employment contracts call for the school to provide a certain number of prospects for the salespeople to contact within a given period of time. The techniques by which schools obtain these leads are numerous. Consumers may send in clippings from magazine ads, or telephone in response to television, radio, or newspaper ads. Some schools will telephone or send brochures to recent veterans or some other population sub-group. See F.T.C. File 742-3111, Advance Schools, Exhibit E-68. Other schools have leafleted areas or left brochures; see V.A. Questionnaires, Exhibit E-55. Some hand-outs are directed at veterans telling them that a (Continued)

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[48] (Continued)

response will provide information about how to utilize their VA benefits. Some schools leaflet low-income areas to capitalize on the FISL program. See Petition for License Revocation in the matter of General Training Services, Inc., to New York State Department of Education, by Elinor Guggenheimer, New York City Commissioner of Consumer Affairs, (1974), Exhibit D-196. One school even offers its students 8400 trading stamps if they supply the name of a friend who eventually enrolls; see "ICS Career Guide," and miscellaneous advertisements, Exhibit E-24.

[49] The leads developed by the salespeople on their own initiative are referred to as "P.D.'s" or personally developed leads. Many schools pay a bonus for enrolling P.D.'s and set separate quotas for such leads. Often the sales manuals will suggest sources for locating P.D.'s. Heading the lists of suggestions are draft board listings of recently discharged veterans, testimony of Peter Farnum, ex-salesperson, Lafayette Academy, Tr. 2859; state vocational rehabilitation offices, Bell and Howell School Materials, Exhibit E-1; and birth and marriage notices in newspapers, op. cit., Exhibit E-1.

The extent of the pressure placed on salesmen to enroll personally developed leads is enormous. One school sent a letter to its salesmen indicating that failure to achieve 25 percent P.D. enrollments would be a cause for termination or probation. Memo from Regional Manager to all Sales Representatives, Bell and Howell Schools (December 11, 1974), Exhibit E-176.

[50] See Part I, Section IV, supra.

[51] See, e.g., Bell and Howell School materials, "The New World of Opportunity", Exhibit E-1; selected ads and catalogues from Private Vocational and Home Study School Project, Chicago F.T.C. Regional Offices, Exhibit E-3; International Correspondence Schools material, Exhibit E-24; sales presentation and advertising materials for North American Training Academy, Inc., (732-3362), Exhibit E-61; promotional material of National Truck Driver Training School, San Francisco, California, Exhibit E-72; promotional literature for Diesel Drivers Schools, Inc., Kansas City, Missouri, Exhibit E-74; advertisements, enrollment contract for American Truck Driving Schools, Chicago, Exhibit E-89.

Once the salesperson has a "lead" the next step is to "convert" it to a sale. As described above,[52] tremendous pressure is put on sales people to produce enrollments through a commission-based compensation scheme, quotas, and contests. Moreover, failure to convert a required percentage of leads can constitute ground for termination since the school does not want to see its leads wasted.[53]

Almost invariably, the type of sales presentation we are describing here[54] is in the prospect's home. But some schools require students to come to the school or local office. Wherever the sale is, and whether the salesperson is called an agent, representative, counselor, or admissions officer, it can take on the same pattern.[55] If the sale is in the home, the salesperson must next introduce him or herself to the lead and gain entry. This can take several forms. The salesperson may telephone first, the school may send follow-up literature that states conspicuously, or sometimes ambiguously, that a salesperson will call, or the salesperson may just call unannounced.[56]

The next step is for the salesperson to visit the lead at the consumer's home. A common misrepresentation can occur at the very beginning of this visit, in the way the salesperson identifies him or herself to the consumer, this can take several forms--misrepresentation that the salesperson is a government representative, guidance counselor or an individual who stringently enforces tough admission standards.

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[52] See Part I, Section V-B(4), supra.

[53] See statement of Gerry S. Mussells, former vocational school salesperson (September 23, 1974), Exhibit E-213.

[54] Some schools, particularly small ones, that utilize sales representatives at the school, visiting local high schools, or even entering the prospect's home, use an entirely different approach than will be outlined below.

[55] See, e.g., testimony of W. Gaines, Investigative Reporter, Chicago Tribune, Tr. 7017.

[56] The FTC Guides for Proprietary Schools, 16 C.F.R. Section 254.7, prohibit salesperson visits pursuant to advertisements unless the advertisements clearly state that a salesperson may visit, or unless a salesperson phones in advance.

False claims of government affiliation, both explicit and implicit, and the use of phony government identification have been previouly discussed.[57] Claims of this nature are utilized to reduce the sales resistance of the consumer. The natural skepticism with which the prospect would view the salesperson's pitch quickly evaporates in the face of the wrongly-held view that the salesperson is in fact a government representative or duly licensed agent carefully watched by a state licensing agency.[58]

For example, one school's salespeople passed themselves off as HEW employees for purposes of approving FISL applications.[59] Other former salespeople testified that they attempted to convey the impression that they were affiliated with the government for purposes of making FISL or VA money available to the prospect. One former salesperson stated:

> The name Bell and Howell overwhelmed students; and further they were overwhelmed because 90 percent or more of Bell and Howell students were enrolled under the federally insured student loan or FISL program. And this, in itself, lent further intimidation on the part of the prospective students, because here's a salesman now armed with a very legalistic looking document printed in Washington, the FISL application, and apparently the authority of approval or disapproval of the loan.[60]

Salespeople make similar use of their schools' participation in the veterans' benefits program. Not only salespeople, but also the schools' advertising copy, in claiming that the school is "approved" for VA training, or "approved under the GI Bill",[61] use the aura of the federal stamp of approval. The clear implication of advertising of this nature is that the United States Government has examined these institutions and is vouching for them.[62] But as is demonstrated in the discussion of these programs, the government "approval" for use of benefits does not mean that the agencies have evaluated or endorsed the schools themselves.[63]

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[57] See Part I, Section IV-D(8), supra.

[58] See, e.g., testimony of Robert Zepernick, former salesperson, North American School of Conservation and Ecology, Tr. 3921 and 3929; testimony of Wallace Kelley, former salesperson, Tr. 3427-3429.

[59] See, e.g., complaint and affidavits filed with OE against Technical Education Corp. re: FISL, misrepresentation, refund, Exhibit D-23.

[60] Testimony of W. Ralston, ex-salesperson, Famous Schools, ICS, Bell & Howell, Tr. 400.

[61] Actually, the misrepresentations are of two varieties. Some schools explicitly misrepresent the nature of the approval
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Equally deceptive are the commonplace usages of the titles "admissions counselors" or "educational counselors" by commissioned and salaried salespeople of the vocational school industry.[64]

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[61] (Continued)

by advertising that the school itself is "approved by the V.A." Examples of this type of advertising are found at interview reports with former students of Savannah Automation School (702-3252), Atlanta Regional Office (May 1970), Exhibit C-28; Sylvia Porter, "A Hard Lesson," New York Post (November 20, 1974), Exhibit D-190; John Aquilino and James Norrell, "Welcome Home, Soldier Boy; How Servicemen Get Defrauded in Their Search for Career Training," The Washington Star-News, (October 8, 1972), Exhibit D-315; Complaint for Damages (Fraud and Deceit; Breach of Contract; Recision), James Vogus, *et al.*, vs. West Coast Trade Schools, *et al.*, Superior Court of the State of California for the County of Los Angeles, Docket No. 962294 (October 2, 1969), Exhibit D-229; statement of Mr. Richard Joseph Krawiec, former student of Career Academy (October 31, 1974), Exhibit D-216; "Annual Fall School Guide," Chicago Tribune (August 13, 1972), Exhibit E-83.

The second type of misrepresentation arises out of the use of advertising stating "approved for veterans' training." Examples of this are found at testimony of M. Burns, Executive Secretary, Rhode Island Higher Education Assistance Corp., Tr. 813; Catalog (1972-74) and Application, Rassmussen School of Business, Exhibit D-204. While this latter designation is accurate, the schools fail to disclose that the federal government has not in any way examined the course quality or sales practices of the school. *See* Part I, Section VIII-C(1), *infra*, for a complete explanation of the V.A.'s role in "approving" courses.

[62] Statement of Wallace Kelly, former salesman for Jetma Technical Institute, South San Francisco, California (November 7, 1974), Exhibit E-138; testimony of Robert Zepernick, former salesman, North American School of Conservation and Ecology, Tr. 3921 and 3929.

[63] *See* Part I, Section VIII-C(1) and (2), *infra*.

[64] *See*, *e.g.*, F.T.C. Guides, 16 C.F.R. Section 254.7(6).

In setting the tone for the negative sell to follow, the salesperson creates the illusion that his or her job is to determine whether the student should embark on this career and whether the student is qualified to be enrolled in the school. As stated previously, salespeople rarely have any background in education or counseling. In fact, some sales managers have said that such a background would disqualify one from being a salesperson because such a salesperson would be more concerned with the prospect's welfare that with making a sale.[65]

The salesperson's actual role as a recruiter is clearly exposed when one considers what a real counselor is like. Legitimate counselors often possess a master's degree in education or counseling, are usually compensated on a straight salary basis without any quota overtones, and often are controlled by the state through licensing.[66] Their role is to assist in the choosing of a career through various forms of counseling and ability testing.[67] It is precisely this role in which the vocational school salesperson tries to cast him or herself in order to disarm the prospect. But he lacks both the necessary qualifications and the intent to counsel.

This practice of branding salespeople as "admissions counselors" appears frequently in the industry. Numerous F.T.C. actions and court cases[68] have sought to prevent the practice. Yet all types of schools--correspondence, residence schools, schools accredited by NATTS, NHSC, and AICS--continued to engage in this practice.[69]

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[65] See, e.g., testimony of R. Foss, former vocational school salesman, Tr. 614.

[66] See, e.g., testimony of Dr. Duane Lund, Superintendent of Schools, Staples, Minnesota, Tr. 2511; testimony of John E. Tirrell, Vice President for Governmental Affairs of the American Association of Community and Junior Colleges, Tr. 2187; testimony of D. Smith, American School Counselors Association, Tr. 4276; testimony of Edward E. Gordon, President and owner of Imperial Educational Services, Inc., Tr. 6432.

[67] Id.

[68] See, e.g., F.T.C. Complaint in the Matter of Control Data Corp. and Automation Institute of American, Inc., Docket No. 8940 (October 3, 1973), Exhibit D-116; FTC Complaint in the Matter of Lafayette United Corporation, Docket No. 8963 (May 2, 1974), Exhibit D-118; FTC Complaint in the Matter of Lear Siegler, Inc., Docket No. 8953 (January 24, 1974), Exhibit D-113; F.T.C. Complaint in the Matter of Electronic Computer Programming Institute, Inc., Docket No. 8952 (January 24, 1974), Exhibit

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68 (Continued)

D-125; Findings of Fact and Conclusions of Law, People of the State of California v. California Career Counseling (August 19, 1974), Exhibit D-136; Final Judgment, The People of the State of California v. Computing and Software, Inc., d/b/a/ West Coast Trade Schools, Inc., Docket No. 952996 (March 23, 1971), Exhibit No. D-230.

69 See, e.g., student complaint letters, Exhibit J-1; F.T.C. Complaint in the Matter of Lafayette United Corporation, Lafayette Academy, Inc., Lafayette Motivation Media, Inc., and Stuart Bandman, individually and as an officer and principal stockholder of Lafayette United Corporation, Docket No. 8963 (May 2, 1974), Exhibit D-118; F.T.C. Complaint in the Matter of Lear Siegler, Inc., Docket No 8953 (January 24, 1974), Exhibit D-113, (holds out its salespeople as qualified vocational counselors); F.T.C. Complaint in the Matter of Control Data Corportion and Automation Institution of America, Inc., Docket No. 8940 (October 3, 1973), Exhibit D-116; sales presentation, North American Training Academy, Exhibit E-61 ("The school pays enrollment counselors like myself a salary to come out and interview you to determine whether or not you qualified to submit a preliminary application for training"); Findings of Fact and Conclusions of Law entered in the case of People of the State of California v. California Career Counseling, et al., submitted by Diana W. Cohan, Deputy Attorney General, San Francisco, California (August 19, 1974), Exhibit D-136; op. cit., Exhibit D-116; promotional literature of National Truck Driver Training School, San Francisco, California, Exhibit E-71; statements of several former students of ECPI of Santa Clara Valley, California (March 1975) with attachments, Exhibit D-271; promotional material of National Truck Driver Training School, San Francisco, California, Exhibit E-72; LTV Educational Systems (Ling-Temco-Vought), sales training manuals (1970), Exhibit E-15 (counselors, educators); "Correspondence Schools and the Military Market," Stars and Stripes (November 1973), Exhibit E-51; questionnaires completed by Weaver Airline Personnel School students for F.T.C. Kansas City R.O. case no. 722-3149, Exhibit D-104; documents relating to the application for and subsequent denial of accreditation of Harvard Automation Business College, Exhibit F-91; testimony of R. Middleton, administrator, Winsalm College, Tr. 2826.

Many of the large correspondence schools label their sales people "field representatives."[70] While such a designation is a more accurate description of the salesperson's role, the schools engaged in other activities which re-establish the student's image of the salesperson as a counselor. For example, McGraw-Hill describes its "field representatives" in the following manner:

> The CREI Field Service Representative in your area will be your most direct, personal contact with the Institute. In fact, he has been specially selected for his ability to serve you.... His first responsibility is to determine your qualifications for enrollment with CREI....[71]

However, as was shown in the Section concerning the recruitment and hiring of salespeople, the only criterion by which the salesperson is judged is ability to sell. Moreover, as demonstrated in the discussion of compensation schemes, it is apparent that the salesperson's first responsibility is to sell.

Thus, even the schools which do not call their salespeople counselors, portray them as such at every opportunity. McGraw-Hill's sales manual provides a good example of this sales approach:

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[70] See, e.g., International Correspondence Schools, sales training manual and "The Turning Point," Exhibit E-24; catalogs and selected sales materials of CREI, Exhibit E-133; letter from Jessica Mitford to F.T.C. (July 16, 1970), Exhibit E-245 (Famous Writers Schools).

[71] See catalogs and selected sales materials of CREI, A Division of McGraw-Hill Continuing Education Center, Exhibit E-133; see also International Correspondence Schools materials, Exhibit E-24:

> Your ICS Representative was selected to serve in your community because he is sensitive to and understands people. He has been trained to gather information, to ask you questions that perhaps you ought to be asking yourself.

Bell & Howell School materials, Exhibit E-1:

> "After you've identified yourself and established Bell and Howell as being among the finest institutions of its kind in the country, you should immediately begin casting yourself in the role of a concerned helper sincerely interested in assisting the prospect in achieving his career goals".

> You [the McGraw-Hill salesman] need to sell the interview first. Disarm the prospect. Establish yourself as a counselor or advisor, not a money-grabbing, hit-and-run, fast buck artist. Overcome his natural suspicions.[72]

2. The Negative Sell

Having gained entry into the prospect's home and reduced his resistance by representing that an "admissions" process is being followed, the actual sales pitch begins.

One of the most common sales strategies used by proprietary vocational schools is a technique known as the "negative sell." The essence of this highly developed and successful sales pitch is to demean and degrade the prospect's abilities and embarrass and humiliate the prospect. This tactic seeks to turn the tables on the prospect, undermining the natural sales resistance and forcing the individual to prove his or her worth to the salesperson, instead of the salesperson proving the worth of the course to the prospect. Naturally, the more negative the sell, the more vivid the impression that only a few qualified prospects will be permitted to enroll into the school. A former salesperson explained it this way:

> [W]e tried to find something negative about the prospect to put him on the defensive. Inevitably the prospect would then insist that the negative was not true and he would try to prove why he was worthy of being selected for the course.[73]

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[72] "Planned Sales Presentation for CREI Electronics Program," A Division of the McGraw-Hill Continuing Education Company, (April 1972), Exhibit E-132.

[73] Testimony of A. Goldberg, former salesperson of American Motel Schools, Tr. 2799 at 2801; see also testimony of M. Cohen, former salesperson for American Training Service, Tr. 2213, wherein the following description was given:

> We used what is known as the negative sell. We used the qualification chart which really had no qualification type questions and in each instance the idea was to find something wrong or negative with the prospect. We put the prospect on the defensive and let him convince us, the salesman, that he should be admitted to the school. In reality, of course, everyone was admitted. However, at the end of a good sales pitch the prospect felt lucky to be getting into the school. He felt that he had done well in the interview and for that reason alone, he was being recommended for admittance.

It is this process of determining something negative in the prospect's background--such as unemployment, underemployment, lack of education, lack of money to properly support a family--which gives rise to the term "negative sell."

While some industry officials have testified that they have never even heard of such a concept,[74] the record in this proceeding leaves little room for doubt that the negative sell is an industry-wide phenomenon.[75]

The negative sell presentation can be explained as having five distinct stages. Note that much of what happens in these stages closely parallels some of the individual forms of misrepresentations described earlier. Indeed, the negative sell technique is a selling format purposely constructed to weave together the threads of several distinct forms of deceptive claims and practices. It consists of the following stages:

1. use of qualification forms,

2. false claims of selective enrollment practices,

3. the course presentation,

4. closing techniques, and

5. post-sell tactics and avoidance of the required cooling-off periods.

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[74] Testimony of Bernard Ehrlich, counsel to NATTS, CAC, and NHSC, Tr. 9272.

[75] See, e.g., testimony of former salespeople: testimony of H. Holley, former salesperson, ICS, Tr. 2751; testimony of W. Ralston, former salesperson, Famous Schools, Tr. 400; testimony of Richard Foss, former salesperson, Famous Schools and International Correspondence Schools, Tr. 614; catalogs and selected sales materials of CREI, A Division of McGraw-Hill Continuing Education Center, Washington, D.C., Exhibit E-133; statement of Wallace Kelley, former salesperson for Jetma Technical Institute, South San Francisco, California, (November 7, 1974), Exhibit E-138; testimony of Meyer Cohen, former salesperson, American Training Service, Tr. 2213; testimony of Peter Farnum, former salesperson, Lafayette Academy, Tr. 2859; statement of Marvin Dirks, former Universal Schools Correspondence Schools salesperson (September 17, 1974), Exhibit E-125; statement of Gerry S. Mussells, former vocational school salesperson (September 23, 1974), Exhibit D-213; testimony of Warren Randolph, former salesperson, Weaver Airline Personnel School, ITT Technical Institute, Lafayette Academy, Tr. 450; testimony of Arnold Goldberg, former salesperson
(Continued)

[75] (Continued)

American Motel School, Tr. 2799; sales training materials of the schools: Bell & Howell representative's manual, Exhibit E-1; LTV Educational Systems (Ling-Temco-Vought), sales training manuals (1970), Exhibit E-15; Lewis Hotel-Motel School materials, Exhibit E-23; LaSalle Extension University, The Qualifying Interview Workbook, Exhibit E-25; North American Correspondence Schools, sales training manual (January 1972), Exhibit E-26; ICS "Interest Evaluation", *i.e.*, application form, presented orally to prospect by sales representative, Exhibit E-45; Weaver Airline Personnel School salesmen's manual with sales scripts, Exhibit E-107; "Planned Sales Presentation for CREI Electronics Programs," A Division of the McGraw-Hill Continuing Education Company, (April 1972), Exhibit E-132; sales manual, International Correspondence Schools, Exhibit E-24; former school owners: testimony of Andrew Edelman, former director of a private business school, Tr. 1606; testimony of John D. Goss, former teacher, Plus Gray School of Business, New Haven and Hartford Academy of Business, Tr. 2872; independent studies: "Private Accreditation and Public Eligibility" (Vols. I and II) by Orlans *et al.*, Brookings Institute Report (February 1974), Exhibit D-21; newspaper exposes: Ken McEldowney and Katherine Higgins, "Bitter Lessons of Vocational Schools," *San Francisco Bay Guardian* (January 24, 1975), Exhibit D-236; Carl Bernstein, Series on Career Schools, *The Washington Post* (July 12-15, 1971), Exhibit D-69; *Chicago Tribune* series on career schools (June 8-13, 1975), Exhibit D-284; compilation of newspaper and magazine articles regarding vocational schools (May 6, 1974-June 30, 1975), Exhibit D-292; other public hearings: New York State Public Hearings in the Matter of Computer Schools (December 4, 1970), Exhibit A-9; F.T.C. Hearings on Proposed Guides for Private Vocational and Home Study Schools (December 10, 1970) (Docket 216-14), Exhibit A-12; Wisconsin Educational Approval Board, Hearings of Proposed Administrative Rules re: Proprietary Vocational Schools (September 12, 1972), Exhibit B-3; consumer complaints: F.T.C. Hearings on Proposed Guides for Private Vocational and Home Study Schools (December 1970), Exhibit A-23; testimony of Gary Yesser, attorney, Rhode Island Legal Services, Tr. 534; letter from Stephen Scampini, former student of ECPI (January 10, 1975), Exhibit E-200; interview reports with former students of Weaver Airline Personnel School (722-3149, DK3 00040, Exhibit D-105.

Qualifications Questionnaires and Interest Evaluation Forms

The first step in the negative sales presentation occurs through the use of qualification questionnaires or interest evaluations. Whether filled out by the prospect or administered orally by the salesperson, these forms have widespread use within the industry.[76] While the student believes that he or she is filling out an application form or some type of instrument that will be used to evaluate the individual's qualifications for enrollment, typically the forms are a tool to ascertain those sources of the prospect's discontent with regard to present employment, education, income, social status, or other fears concerning his or her ability to provide for a family.[77]

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[76] See, e.g., International Correspondence Schools, Interest Evaluation Questionnaire, Exhibit E-24; Sidney Margolius, "Watch Out for Those High-Pressure 'Training Schools'" Co-op News (February 3, 1975), Exhibit C-195; testimony of H. Holley, former salesperson, ICS, Tr. 2751; testimony of Arnold Goldberg, former salesperson, Amercan Motel School, Tr. 2799; Bell and Howell Schools, Confidential Qualification Questionnaire, International Accountants Society, Exhibit E-1; Lewis Hotel-Motel School materials, Exhibit E-23; LaSalle Extension University, The Qualifying Interview Workbook, Exhibit E-25; North American Correspondence Schools, sales training manual (January 1972), Exhibit E-26; ICS "Interest Evaluation", i.e., application form, presented orally to prospect by sales representative, Exhibit E-45; Weaver Airline Personnel School salesmen's manual with sales scripts, Exhibit E-107; statement of Roland E. Lopez, former vocational school salesperson (Atlantic Schools, Bryman School, LaSalle, Jetma) (January 27, 1975), Exhibit E-206; interview reports with former salesmen of Weaver Airline Personnel School (722-3149, DK3 0004), Exhibit E-105; statement by Stephen D. Warden, former salesperson, Career Academy and ECPI (September 17, 1974), Exhibit E-173; testimony of Warren Randolph, former salesperson, Weaver Airline Personnel School, ITT Technical Institute, Lafayette Academy, Tr. 450.

The forms perpetuate the illusion that the salesperson is ascertaining whether the prospect qualifies for admission to the school. At the same time it provides the salesperson with valuable information to be used against the prospect to make the sale. The salesperson now has some idea of the source of discontentment which prompted the inquiry (and thereby the sources of greatest vulnerability of the prospect) and the potential goals of the prospect. The salesperson can use this dissatisfaction as the basis for the sales presentation and as a source of embarrassment and harassment. Former salespeople for various schools testified that the sole object of the questionnaires was to obtain information to use against the prospect:

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[77] For example, questions such as those which follow are frequently used:

1. My present occupation is:
    - ( ) not too promising
    - ( ) filled with promotion opportunities
    - ( ) a dead-end
    - ( ) I'm unemployed
2. I think that training
    - ( ) may help me win a promotion
    - ( ) may help me start a new career
    - ( ) may give me extra part-time income

"Self-Evaluation Appraisal," International Correspondence Schools, Exhibit E-24.

> Does your wife work? Do you want her to continue working?
>
> What can you do about having her stop working?

Sales Manual, Atlantic Schools (August 1975), Exhibit E-14.

> [We] constantly badger[ed] them to tell more about themselves, I guess under the pretense we are really interested in them as an individual, which we were not. And the more they spoke about themselves the more negative it seemed like we were not really there to just get their money or get an enrollment but to just find out if they qualified...[78]

Moreover, the use of qualifications questionnaires goes hand in hand with the impression salespeople try to create by describing themselves as "counselors" or "admissions representatives".[79] This creates an illusion that the salesperson is actually visiting the prospect to counsel him or her and determine his or her eligibility for enrollment. The way the image of the salesperson as a counselor and the qualifications questionnaire reinforce each other is seen in the following representation made in a brochure of a major correspondence school:

> Your ICS [International Correspondence Schools] Representative was selected to serve in your community because he is sensitive to and understands people. He has been trained to gather information, to ask you questions that perhaps you ought to be asking yourself. You'll want to explore the career opportunities in the field that attracts you...to review your qualifications...to measure.
>
> The Self-Evaluation Appraisal which begins on the facing page asks some probing questions. Answer them honestly...without concern. There are no "right" or "wrong" answers. Together, you and your Representative will review and evaluate your Self-Evaluation Appraisal. Then, should it be determined that your interest is sincere and your career goals are within reach, you may apply for enrollment at ICS.[80]

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[78] Testimony of Richard Foss, former salesperson for Famous Schools, Tr. 614.

[79] *See* Part I, Section V-B, *supra*.

[80] "The Turning Point," ICS, Exhibit E-24. It is interesting to note in addition to implying that the salesperson is a counselor who has the consumer's best interest at heart, the school goes on to superimpose another misrepresentation on this one. The last sentence states that the by-product of a sales visit is an "application" for enrollment. In fact, since no one is ever rejected, no true application review is actually employed.

In its communications with the student, the school portrays these questionnaires as devices to achieve lofty goals and decisions. Compare that portrayal made to the student with the manner in which these same questionnaires are often explained to the salespeople:

> QUALIFICATION QUESTIONNAIRE. This is where each sale is made or lost. You lead the prospect step by step into solidifying his decision to take the course which prompted his original inquiry...The questionnaire brings out the prospect's needs and desires for his own and your complete re-evaluation of his past experiences. The more the prospect answers your questions, the more he opens up. And, the more he tells you about himself, the more he sells himself on the course.[81]

Admissions Tests and False Claims of Selectivity

If successful, the qualifications questionnaire or interest evaluation will have brought to the salesperson's attention the various fears and sources of the prospect's discontent. Once this has been accomplished the negative sell shifts into a different gear. At this point the student is made to feel that because of the "flaws" in his or her character which were exposed during the qualifications process, the individual may not qualify for admission. The use of admissions tests, aptitude tests, and false claims of selectivity are next in the salesperson's repertoire. And, of course, by portraying the salesperson not just as a counselor but as an admissions representative, this fear of disqualification is heightened. The successful use of these devices will turn the tables of the sales presentation so that the prospect will try to convince the school that he or she is qualified to enroll.

The reality of school selectivity is of course quite different. While some schools have testified to their desire to screen out unqualified applicants, most schools enroll anyone who meets a very low minimum standard.[82] Virtually every salesperson commenting in this proceeding has made it abundantly clear that these claims of selectivity are little more than a myth[83]--they never had a single student "rejected."[84]

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[81] North American Correspondence Schools, sales training manual (January 1972), Exhibit E-26. (Emphasis added.)

[82] Testimony of W. Wilms, Center for Higher Education, University of California, Tr. 3195; and testimony of W. Goddard, Executive Director, National Association of Trade & Technical Schools, Tr. 9166.

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[83] See, e.g., testimony of Gini L. Gustafson, former salesperson, Virginia Computer College, Tr. 2581, testimony of W. Ralston, former salesperson, Famous Schools, Tr. 400; testimony of R. Foss, former salesperson, Famous Schools, ICS, Tr. 2614; testimony of R. Lopez, former salesperson, Atlantic Schools, Bryman Schools, LaSalle, Ryder, Jetma, Tr. 4533; testimony of R. Zepernick, former salesperson, North American School of Conservation and Ecology, Tr. 3921; testimony of William Gaines, Investigative Reporter, Chicago Tribune Task Force, Tr. 7017.

[84] See, e.g., testimony of Harold Chambers, former District Manager for LaSalle Extension University and Commercial Trades Institute, former salesperson for International Correspondence Schools, Tr. 1962:

> In all of the hundreds of students I have enrolled, I have never had one rejected. In fact, I had a letter from an attorney--LaSalle had a letter from the Attorney General of North Dakota wanting to know why I enrolled a moron in a computer programming course.

H. Holley, Fact or Fallacy: The Pro's and Con's of Home Study and Correspondence, Hol-Cot Enterprises, Inc. (1972), Exhibit E-186:

> The following question was asked by a relatively green, unseasoned representative at a state sales seminar at which were present over 40 sales representatives. "What should be done if I feel a particular prospect lacks the ability or mental stamina to handle a course in electronics?" This answer came from a department director officiating at the seminar who had designed and was responsible for extensive sales and training procedures for the particular institution and who was responsible for nearly 100 representatives in his department. "Well, there is absolutely nothing in this course that could harm him and possibly if he shows interest, it could prove to be valuable therapy...Gentlemen, money is the name of this game."

Testimony of W. Ralston, former salesperson, Famous Schools, Tr. 400; testimony of Warren Randolph, former salesperson, Weaver Airline Personnel School, ITT Technical Institute,

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This lack of selectivity is actively fostered by sales management. One former salesperson related his conversation with his former sales manager concerning an applicant whom the salesperson believed to be unqualified:

> A husband of a student didn't quite understand something. He had read it the night before when I was there. When I went back this night, he was not home. So I asked her to please read back to me the paragraph that was causing some difficulty in understanding. This gal could not read. She could not read the paragraph at all. So I left the home and I told her that I would have to re-evaluate my appraisal of her to the Academy because of the problem. She kind of halfway understood. She nodded her head, a little disappointed. I went back and told this problem to my boss. I said that I would not enroll her.
>
> He came back to me: "She was willing, everything was signed and she was, he was, so why don't we do it"? I said, "I will not." He said, "Don't you understand the whole thing"? I said, "I am starting to understand a lot and don't like what I see." He looked at me--and I do remember this--he said, "Do you really give a damn? We are dealing here in numbers and we are talking about big money in cash." "I don't care. Why should you?"[85]

The claims of selectivity made by the schools are merely ploys to further break down the prospect's resistance. For example, in its sales manual, one large school instructs its salespeople on the use of the mirage of selectivity:

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[84] (Continued)

Lafayette Academy, Tr. 450; testimony of Meyer Cohen, former salesperson, American Training Service, Tr. 2213; testimony of Gini L. Gustafson, former salesperson, Virginia Computer College, Tr. 2581; testimony of H. Holley, former salesperson, ICS, Tr. 2751; testimony of A. Goldberg, former salesperson for American Motel Schools, Tr. 2799; testimony of Peter Farnum, former salesperson, Lafayette Academy, Tr. 2859; testimony of G. Boros, salesperson, Tr. 1457.

[85] Testimony of Peter Farnum, former salesperson, Lafayette Academy, Tr. 2859.

> (Aside to representative: Note, I am not letting down, I am still negative, and I don't let down for a long, long, long time, to get a high percentage of sales and to make a lot of money and to help a lot of people, because that is the only way we can do it. One must use his very, very best selling with every single prospect. He must say to himself, "I will never, never ever have another opportunity to sell anyone, I must sell this one, this one appears acceptable to the school, I must get this enrollment." Well we know the way to get it is to point out what this prospect gains but make it hard to get. Make it hard to get in the school and be negative all the way through, make them break down instead of your letting up.) 86

These claims of selectivity in admissions policies pervade most schools' negative sales presentations.[87] Frequently, the salesperson is instructed to use the term "if you are accepted" repeatedly during the sales pitch.[88] Whatever the technique used to convey the false claim of selectivity, the goal is the same: make the prospect sell him or herself.

Just as effective as claims of selectivity are the use of aptitude tests and sample lessons. The sample lessons and accompanying tests are usually a facile set of materials bearing little resemblance to the actual course materials. If the student passes the exam, the salesperson may congratulate the student, telling him that the job potential is rosy as long as he enrolls. If the individual fails the exam, on the other hand, then obviously he needs the course to improve himself and enhance the potential for entry into the job market.[89]

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[86] Weaver Airline Personnel School, salesman's manual with sales script, Exhibit E-107.

[87] Catalog and Interest Evaluation Questionnaire, ICS Electrician School, Exhibit D-200; advertisement for ICS, Exhibit E-24; promotional literature of CTA Truck Driver School, Los Angeles, California, Exhibit E-71; promotional literature for Diesel Drivers Schools, Inc., Kansas City, Missouri, Exhibit E-74; catalogs and selected sales materials of CREI, A Division of McGraw-Hill Continuing Education Center, Exhibit E-133; Digest prepared by F.T.C. staff, extracts of relevant testimony from hearings as follows: F.T.C. Hearings on Proposed Guides for Private Vocational and Home Study Schools (December 1970); Wisconsin Educational Approval Board, Hearings on Proposed Administrative Rules (September

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87 (Continued)

1972); Hearings Before Subcommittee on Readjustment, Education and Employment of the Senate Committee on Veterans' Affairs (March 1972); New York State Hearings in the Matter of Computer Schools (December 1970), Exhibit A-23; series of F.T.C. interview reports with consumers--Radio Broadcasting Associates, Exhibit E-51; statements of several former students of ECPI of Santa Clara Valley, California, (March 1975), with attachments, Exhibit D-271; testimony of Richard Gross, attorney, Boston Legal Assistance Project, Tr. 32; letter from H. Young, Boston Legal Assistance Project, to K. Barna, Boston F.T.C. Regional Office (September 25, 1974), with demand for relief letters to ITT Technical Institute, Boston, Exhibit E-183; interview report with Karen Spiegal, former student ITT Tech. (November 12, 1974), Exhibit E-214; statement of Richard Joseph Krawiec, former student of Career Academy (October 31, 1974), Exhibit D-216; interview reports with former students of Weaver Airline Personnel School (772-3149, DK3 00040), Exhibit D-105; testimony of Kevin Cullinane, former student, Coyne Electric and Technical School, Tr. 661; Herzing Institutes' bulletins (1972 and 1973), Exhibit D-52; enrollment contract for United Electronics Institute, Exhibit E-191; H. Orlans, "The Protection of Students at Proprietary Vocational Schools, Exhibit H-90; testimony of R. Wasson, counselor-educator, Tr. 1810; New York State Public Hearings in the Matter of Computer Schools (December 4, 1970), Exhibit A-9; Hearings before Subcommittee on Readjustment, Education, and Employment of the Committee on Veterans' Affairs, U. S. Senate, on Section 2161 and related bills (March 23, 24, April 20 and 28, 1972), Parts I and II, Exhibit A-14; Wisconsin Educational Approval Board, Hearings on Proposed Administrative Rules re: Proprietary Vocational Schools (September 12, 1972), Exhibit B-3; Carl Bernstein, Series on Career Schools, The Washington Post (July 12-15, 1971), Exhibit D-69; Chicago Tribune series on career schools (June 8-13, 1975), Exhibit D-284; compilation of newspaper and magazine articles regarding vocational schools (May 6, 1974 - June 30, 1975), Exhibit D-292; Ken McEldowney and Katherine Higgins, "Bitter Lessons of Vocational Schools", San Francisco Bay Guardian (January 24, 1975), Exhibit D-236; testimony of W. Ralston, former salesman, Famous Schools, Tr. 400; Harold Holley, Fact or Fallacy: The Pro's and Con's of Home Study and Correspondence, Hol-Cot Enterprises, Inc. (1972), Exhibit E-186; testimony of Harold Chambers, former District Manager for LaSalle Extension University and Commercial Trades Institute, former salesman for International Correspondence Schools, Tr. 1962; Lewis Hotel-Motel School Materials, sales interview script (November 1973), Exhibit E-23; representative's manual for ICS, Exhibit E-24; Weaver Airline Personnel School salesmen's manual with sales scripts, Exhibit E-107; Representatives

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Manual, Bell & Howell School, Exhibit E-171; Questionnaires completed by Weaver Airline Personnel School students for F.T.C. Kansas City Regional Office, 722-3149, Exhibit D-104; "Is Home Study Biz a Rip-Off?" by Russell A. Lewis, former instructor, Commercial Trades Institute, Exhibit D-33; LTV Student Qualification Materials (1970-71), Exhibit A-19; transcripts of hearings in the matter of Weaver Airline Personnel Schools, Inc., et al., Docket No. 732-3167, Kansas City F.T.C. Regional Office, (October-November, 1972), Exhibit E-158; series of affidavits of Lear Siegler personnel disputing the allegations of a former sales representative (1971), Exhibit E-59.

88 See, e.g., representative's manual for ICS, Exhibit E-24.

89 One school instructs its salespeople to use the demonstration lesson in this manner:

DEMONSTRATION LESSON

PURPOSE ---

To overcome "fear of failure"

METHOD

1. Make no comments . . . If he passes do not congratulate him.

2. Again, make no comments . . . If he fails, "Obviously he needs our help".

International Correspondence Schools, sales training materials--"Ten Golden Rules", Exhibit E-24. Another description of this tactic is as follows:

> Some of the applications processed include tests that an individual might take, and the test might be ostensibly a Civil Service type examination and the salesman grading the test would tell the client that the grade was not terribly good, not at all good enough to get a government job, but there was potential there and the grade wasn't terribly bad either, and what this particular person would need was this type of training course, and after the training course was completed they would do much better on the examination, thereby qualifying themselves for a job.

Testimony of Gary Yesser, attorney, Rhode Island Legal Services, Tr. 534.

Admission tests are used in much the same manner. The use of such a test conveys to the prospect the idea that his or her ability is being measured, and that the individual is being carefully screened. In reality, the test results are often meaningless, except as a sales tool. In several newspaper exposes in different areas of the country investigative reporters posing as prospective students have deliberately flunked admission tests and yet were readily admitted.[90] Indeed, salespeople have testified that they could not remember an applicant being rejected because of a low score on an admission test.[91]

Course Content and Employment Representations

After these first two stages--use of qualification questionnaires and aptitude tests--the salesperson has uncovered the sources of the prospect's discontent with his or her present situation and the individual has put the prospect in the position of being unsure whether the school even thinks he or she is "qualified" to be helped by the school. It is at this point that the salesperson presents his pitch on the course itself.

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[90] *See*, *e.g.*, Ken McEldowney and Katherine Higgins, "Bitter Lessons of Vocational Schools", *San Francisco Bay Guardian*, (January 24, 1975), Exhibit D-236; Sidney Margolius, "Watch Out for Those High-Pressure 'Training Schools' *Co-op News*, (February 3, 1975), Exhibit E-195.

[91] *See*, *e.g.*, Testimony of Roland E. Lopez, former salesperson, Tr. 4583; testimony of Gini L. Gustafson, former saleswoman, Virginia Computer College, Tr. 2581; *see also* testimony of Gary Yesser, formerly of Rhode Island Legal Services, Tr. 534; findings of Fact and Conclusions of Law entered in the case of People of the State of California v. California Career Counseling, *et al.*, submitted by Diana W. Cohan, Deputy Attorney General, San Francisco, California (August 19, 1974), Exhibit D-136; Albert Merrill School v. Eugene Codey, Civil Court of the City of New York (June 27, 1974), Exhibit D-195; Petition of License Revocation in the matter of General Training Services, Inc., to New York State Department of Education, by Elinor Guggenheimer, New York City Commissioner of Consumer Affairs (1974), Exhibit D-196; F.T.C. Complaint in the Matter of Control Data Corporation and Automation Institute of America, Inc., Docket No. 8940 (October 3, 1973), Exhibit D-116; materials received from Rhode Island Legal Services, Exhibit D-265; letter from former student of Heald Business College (December 17, 1974), Exhibit C-165; letter from Deloris Nails, former student of Control Data Institute (December 18, 1974), Exhibit C-180; F.T.C. Complaint in the Matter of Commercial Programming Unlimited, Inc., and Walter Small, individually and as an officer of said corporation, Exhibit D-124; Final Judgment (Continued)

In making the presentation on the virtues of the course being offered, the salesperson places heavy reliance on claims of job availability and earnings potential discussed previously.[92] Glamorous predictions of readily available employment at lucrative salaries, claims of close affiliation with industry, representations concerning the merits of the school's faculty and equipment, and explicit and implicit claims of governmental endorsement are made.[93] Some salespeople even create purely fictitious and highly inflated placement rates.[94] No matter how the image is created, the prospect is left with the impression that the school is respectable and the course is capable of producing a new or better job.

After having admitted during the qualification questionnaire process to being a failure, unemployed, or underemployed--often in front of a spouse, parents, or children[95]--and after being told he or she may be lucky enough to be admitted, the prospect finds it difficult to refuse a chance at success.

Just as important as what is in the sales presentation is what is not in it. The salesperson will not discuss the course itself except in the vaguest terms.[96] Often this is

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[91] (Continued)

Pursuant to Stipulation, The People of the State of California v. Computing and Soft-ware, Inc., d/b/a West Coast Trade Schools, Inc., and Solar Electronic Schools, et al., Docket No. 952996 (March 23, 1971), Exhibit D-230; Sidney Margolius, "Watch Out or Those High-Pressure 'Training Schools'" Co-op News (February 3, 1975), Exhibit C-195.

[92] See Part I, Section IV-B(1) and (2), supra.

[93] See Part I, Section IV-C, supra.

[94] Testimony of Anthony DeTore, former salesperson, Bell & Howell Schools, Tr. 5232; see also Part I, Section IV-B, supra.

[95] The sales manuals of many schools call for the salespeople to make sure the spouse or parents of the applicant are present. See, e.g., LTV Educational System (Ling-Temco-Vought), Sales Training Manuals (1970), Exhibit E-15; Lewis Hotel-Motel School Materials, Sales Interview Script (November 1973), Exhibit E-23; International Correspondence Schools, Sales Training Manual, Exhibit E-24; Bell and Howell School Materials, Salesman's Manuals (with salesman's notes), Exhibit E-1.

[96] Testimony of R. Lopez, former salesperson, Atlantic, Bryman Schools, LaSalle Extension University, Ryder Schools, Jetma, Tr. 4533.

insured by the fact that the salesperson knows as little about the course as the student does.[97] Thus, the salesperson is rarely in a position to factually discuss the school's lessons, teaching method, grading system, equipment, and other matters regarding the school's operation.

Drop-out rates are rarely disclosed.[98] When they are, they are often vague, unsubstantiated or inaccurate.[99] If a prospect questions drop-out rates, salespeople are very adept at evading or confusing the issue.[100]

Similarly, accurate placement rates are not disclosed.[101] Instead, as discussed above, the image of universal placement success is fostered by a series of ambiguous, misleading or false representations.

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[97] Testimony of R. Lopez, former salesperson, Atlantic, Bryman Schools, LaSalle Extension University, Ryder Schools, Jetma, Tr. 4533; testimony of Warren Randolph, former salesperson, Weaver Airline Personnel School, ITT, Lafayette Academy, Tr. 450; testimony of M. Cohen, former salesperson, American Training Service, Tr. 2213.

[98] Testimony of R. Lopez, former salesperson, Atlantic, Bryman School, LaSalle Extension University, Ryder Schools, Jetma, Tr. 4533; testimony of R. Zepernick, former salesperson, North American School of Conservation and Ecology, Tr. 3921; testimony of W. Kelly, former salesperson, Tr. 3418; testimony of M. Cohen, former salesperson, American Training Service, Tr. 2213.

[99] Testimony of W. Kelly, former salesperson, Tr. 3418; testimony of Warren Randolph, former salesperson, Weaver Airline Personnel School, ITT, Lafayette Academy, Tr. 450.

[100] Id.

[101] Testimony of Warren Randolph, former salesperson, Weaver Airline Personnel School, ITT, Lafayette Academy, Tr. 450; testimony of M. Cohen, former salesperson, American Training Service, Tr. 2213; testimony of G. Gustafson, former salesperson, Virginia Computer College, Tr. 2581; testimony of W. Kelly, former salesperson, Tr. 3418; testimony of R. Foss, ex-salesperson and sales manager, Famous Schools, ICS, Tr. 614.

Refund policies are rarely discussed, but when they are, obfuscation and misrepresentation are as likely as careful, detailed descriptions in the actual policy.[102] This may be as much a product of the complexity of industry refund policies--particularly combined with the use of veterans' benefits, guaranteed loans, or other government programs--as a deliberate attempt at obfuscation. But whatever the reason, students often do not understand their school's refund policy.[103]

Closing Techniques

Bit by bit, as the sales pitch unfolds, the pressure brought to bear on the prospect increases. The entire negative sell technique is designed to place the prospective buyer in a frame of mind where he or she is peculiarly vulnerable to attempts to shame, embarrass or humiliate the prospect. This attempt reaches its culmination when the salesperson begins the final portion of the negative sell--the close. The close is when the salesperson must parlay everthing he or she has done into getting the consumer to sign on the dotted line. The specific tactic used by the salesperson to close the sale often turns on the information gathered by the salesperson during the course of the qualifications process. The sales manuals of many of the schools bear witness to the school's awareness of the psychological pressures they have created. In the sales manual of one of the largest correspondence schools the following closing pitch is suggested:

> THE SHAMING CLOSE - You can outmaneuver some younger prospects by making them ashamed to say, "I can't afford it." You might say something like the following: "Mr. Beaver, we've known for over 45 years that we won't enroll people if our programs are too expensive. We have also learned something far more important and that is this: if a young man like you does not have the ambition and motivation to find more security; and if he cannot invest--mind you I said INVEST a low monthly payment in his own future--well, there is very little WE can do to help him." This often

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[102] See, e.g., testimony of R. Zepernick, former salesperson, North American School of Conservation and Ecology, Tr. 3296.

[103] Student complaint letters, Exhibit J-1; see Part 1, Section IV, supra.

> puts him into a position whereby he finds it difficult to say he cannot afford it.[104]

The variations on this theme of financial inadequacy used to shame and embarrass students into enrolling are virtually limitless.[105]

By no means is financial embarrassment the only psychological ploy used to close the sale. No fear or inadequacy uncovered during the "qualification" process is sacrosanct. For example, promises of social acceptance, marriage, and children are utilized to push the sales of airline courses to young women.[106]

Another frequently employed closing technique is the so-called "impending event" close. The purpose of such a close is to attach an air of immediacy to the prospective student's decision and to warn of dire consequences which will ensue if the student does not enroll immediately. Often this takes the form of claims that the tuition cost of the course will be increasing in a few days[107] or that the course will be full and

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[104] "Planned Sales Presentation for CREI Electronics Programs", A Division of the McGraw-Hill Continuing Education Center (April, 1972), Exhibit E-132.

[105] See, e.g., North American Correspondence Schools, Sales Training Manual, Exhibit E-26:

> The representative carries in his shirt pocket four crisp bills. Without saying another word, the representative takes out a $20 bill, folds it into a stand-up position, and places it on the table. What he has done, without saying anything, is visually suggested to the prospect that he commit something, like $20. Usually this action draws a comment from the student or his wife. The wife may say, "Honey, I have $20 upstairs I've saved. I can let you have it." This, then, is commitment on the part of the student. Once again, if there's no comment made on the $20 bill, then the representative follows by folding a crisp $10 bill over the $20 bill. This process continues to a $5 or even a $1 bill until you have given the prospect every chance to enroll with some commitment. This approach is what we call our 20-10-5-1 technique. You must remember that, no matter what the prospect says, he usually has some money available in the house... for beer, cigarettes, etc.

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105 (Continued)

> This process we have just described does not cheapen the transaction. It is simply a method of helping the prospect make a decision and commit himself to it.

See also statement of Wallace Kelly, former salesperson for Jetma Technical Institute, South San Francisco, California (November 7, 1974), Exhibit E-138; International Correspondence Schools, sales training manual, Exhibit E-24; Weaver Airline Personnel School salesmen's manual with all scripts, Exhibit E-107; "Planned Sales Presentation for CREI Electronics Program," A Division of the McGraw-Hill Continuing Education Company, Washington, D.C. (April 1972), Exhibit E-132; sales presentation and advertising materials for North American Training Academy, Inc., (732-3362), Exhibit E-61; testimony of Arnold Goldberg, former salesperson, American Motel School, Tr. 2799.

106 See, e.g., Weaver Airline Personnel School salesmen's manual, Exhibit E-107:

> Speaking of dating, I think that girls in the airlines have more dates than anyone. It is a young industry, for young people. They are always planning parties and get-togethers, and the girls (or boys) have more opportunities for dates than in other jobs. You meet young men (or women) with whom you have much in common... and this creates quite a headache to the airline industry... marriage. Sometimes it seems they are running a marriage bureau instead of an airline. The turn-over because of marriage is tremendous each year. We usually don't have that problem with girls your age, Mary, but when girls are a little older they, like most girls want to settle down, become a wife and mother.

107 See, e.g., Weaver Airline Personnel School salesmen's manual with sale scripts, Exhibit E-107:

> For instance, if one were to say, "The price is going up $100.00 on Monday, if you don't get in tonight--you are going to do it anyway--it would cost you $100.00 more." Unless that is true, of course this is FRAUD. This is DECEIT. But that would be an impending event.

The actual close suggested by the same school is indicative of the pressure brought to bear on the prospect:

(Continued)

the prospect will be forced to wait months before he or she can enroll.[108] In each of these instances, the salesperson is able to complete the sales by preying on the fears that he or she has raised in the prospect's mind.

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[107] (Continued)

> IMPENDING EVENT CLOSE - This is where something in the future may shut her out and keep her from achieving a career in the airlines. This is one of the strongest closes we have and just about a door closer. You must be very sincere when you use it. "Mary Anne, we had a class of girls in Kansas City and prior to graduation, we had nearly the entire class placed with the airlines. But when it came time to graduate, five of the girls failed to graduate. We were at a total loss to explain to the airlines how this could happen, they were depending on us for these five who failed to graduate. So we went back through the file of every student in that class and made a survey with the airlines. We found that the five girls that did not graduate had been interviewed more than one time. During the first interview they just couldn't make up their mind, they wanted to think it over, they wanted to be a nurse, they wanted to go to Hollywood, they really had no idea what they wanted to do."

[108] See, e.g., LTV Educational Systems (Ling-Temco-Vought), sales training manuals (1970), Exhibit E-15; Lewis Hotel-Motel School materials, sales interview script (November 1973), Exhibit E-23; Weaver Airline Personnel School salesmen's manual with sales scripts, Exhibit E-107; ICS "Interest Evaluation," e.g., application form, presented orally to prospect by sales representative, Exhibit E-45; questionnaires completed by Weaver Airline Personnel School students for F.T.C. Kansas City Regional Office, 722-3149, Exhibit E-104; transcript of hearings in the matter of Weaver Airline Personnel Schools, Inc., et al., Docket No. 732-3167, Kansas City F.T.C. Regional Office (October-November 1972), Exhibit E-158; testimony of John Goss, former teacher and recruiter, Tr. 2872; testimony of G. Boros, salesperson, Tr. 1457; testimony of Gini L. Gustafson, former salesperson, Virginia Computer College, Tr. 2581; letter from Donald R. Lusby, former student of ECPI (received January 15, 1975), Exhibit C-197; interview reports with students of Key Training, Washington, D.C. (November 1971), F.T.C. Washington Regional Office Case No. 712-3365, Exhibit D-48; interview reports with former (Continued)

The impact of the negative sell and the pressures it creates for the prospect is summarized by the following close utilized by one of the former salespeople appearing at the hearings:

> "John this is going to be tough, this is hard, are you ready to commit yourself for your family, for the betterment, for the things that you really want, for you and your family?" And if he says "NO" what has he done in front of his wife. He has said to his wife, "Honey, I'm not ready to give two weeks of my life to help you and the kids." No man is going to do that, so when we get right down to it and we ask that question...there's only one answer that he can give if he thinks of himself as a man.[109]

Post-Selling Techniques

The negative sales presentation does not come to a halt with the closing of the sale. One further stage, the process of "acceptance" or "post-sell" as it is often called, insures that the enrollee does not change his or her mind and back out of the sale. The purpose of the acceptance procedure is to protect the salesperson and school from the impact of the cooling-off periods imposed by the FTC and numerous state laws.[110] Many of the schools have been able to limit the effectiveness of this rule, if not defeat it entirely, by the "post-sell".

The essence of the post-sell is to leave the consumer in suspense, not knowing whether he or she has been accepted until well after the cooling-off period has expired. An example of this is what one school instructs its sales force to use upon closing the sale:

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108 (Continued)

students of Continental Training Center, Inc., Atlanta Regional Office, (712-3436), Exhibit D-65; letter from John W. Gunn, attorney (January 9, 1975), with attachments, Exhibit D-239; statement of Jay Thoreson, former student of Truckmasters (January 11, 1975), Exhibit D-240; testimony of Eugene Alston, former student, ITT Technical Institute, Tr. 441.

[109] Statement of Wallace Kelley, former salesperson for the Jetma Technical Institute, Exhibit E-138.

[110] See, e.g., 16 C.F.R. Part 429.

> I'm not certain that you will be accepted, but I will assure you that I will do my very best in my report to the Directors. In the meantime, let's keep our fingers crossed. So, as a favor to yourself, I'm asking that you keep your decision to yourself until you have heard from the school. You know, there are 3 types of people in this world. There are wishers who do nothing but sit around and wish they had courage to try something and they wish away their life. Then there are the doers--you strike me as a doer--make a decision and stick with it. This is the type of person the Directors are sincerely interested in. The third kind of person is a "well-meaning friend." These are similar to the wishers. They will try to talk you out of something because they don't have enough determination to try it themselves. Or, they might be envious of you for taking the initiative to make something of yourself. So until you know for sure and undergo no embarrassing after effects, do yourself the favor of keeping this to yourself. If the Directors do not feel you are qualified, these reasons might be misrepresented by others.[111]

By using this approach the salesperson has accomplished two goals. First, the salesperson has rekindled the prospect's fear of rejection which was carefully planted by the salesperson during the course of misrepresenting the school's selectivity. Secondly, the salesperson has injected a new consideration--humiliation by one's peers. Each of these factors works to defeat the goal of the cooling-off period. The student is unlikely to consult friends or family and carefully weigh the merits of his or her decision, given the instructions of the salesperson.

In the numerous examples of the post-sell found on the record, the salesperson cautions the prospect against discussion of the decision to enroll.[112] Even where an explicit "post-sell" is not used, the process of "acceptance" serves much the same purpose. A Chicago Tribune reporter who posed as a vocational school salesperson as part of an investigation summed up the impact of the acceptance procedure:

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[111] Lewis Hotel/Motel School, sales interview script, Exhibit E-23.

[112] See, e.g., Weaver Airlines Personnel School, salesman's manual with sales script, Exhibit E-107:

(Continued)

> The cooling-off period, however, had started, and by the time the applicant learned that he or she had been admitted to the school, he was locked into another front-loaded contract.[113]

Thus, this process of acceptance, or post-sell accomplishes two related objectives. It mutes discussion of the enrollment by the applicant with friends and family. Secondly, it lulls the applicant into inactivity until his three-day cooling-off period has expired. Industry counsel admit the use of this device to circumvent the cooling-off period.[114]

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[112] (Continued)

> Mary, I would like to suggest...of course this is up to you... but...I wish you would wait until we are sure that you have been accepted before you spread the good news. If it turned out that your application was rejected, it could be kind of embarrassing. You'll hear back anyway in 3 to 7 days...either by phone but always by mail, so why not let your friends and relatives wait a few days to hear the good news... O.K.?

International Correspondence Schools, sales training materials, "10 Golden Rules," Exhibit E-24:

> Mr. Jones, only a very few students that I have recommended have been turned down and on at least two occasions it was very embarrassing because they had told their friends and co-workers they were studying with ICS... . Please wait until you receive notification from the school so that neither of us will be embarrassed.

[113] Statement of William Gaines, Investigative Reporter, Chicago Tribune Task Force, Tr. 7017.

[114] Testimony of Bernard Ehrlich, counsel to NHSC, Tr. 9392.

Q. [Mr. Sheldon] As I understand the practice of many schools, an individual will essentially apply for enrollment, he will be told he will be notified at a later time if he's accepted for enrollment and his cooling-off period begins to run at that time. Then his cooling-off period is over. Then at a later time he finds he (Continued)

3. Federal Monies as a Sales Tool

The negative sell becomes even more potent and deceptive when the use of federal subsidies is included in the sales presentation. The availability of federal loans and grants not only reduces the consumer's natural reluctance to expend large sums of his own money, but it also has the pernicious effect of implying federal approval or endorsement of the course itself.

The schools themselves are acutely aware that the availability of federal money significantly weakens sales resistance. For example, the following communication was addressed to all of the salespeople in a particular region for Bell & Howell Schools:

> Get up every morning and say to yourself, I have the product and the way to buy it. I have no money problems because I have FISL and all I have to do is get out and in front of people who have an interest. I am going to sell everyone on FISL. But, I know the best way to sell FISL is to present non-FISL. Make them understand that is our normal tuition pay schedule ($159 dn. - $50 mo.) If they say that (or close to that) is no problem and I know they mean it, I'll let them have non-FISL. However, if they can't handle payments or I feel they think payments are a strain on the budget, LOOK OUT, I'm sticking them in FISL.
>
> Just wait until I show'em how that works. FISL and my salesmanship. What a Combination!
>
> I can't wait to see the look on his face when he tells me "he does want the training" and "if he could afford it he'd start

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114 (Continued)

has been accepted, then he has no opportunity to change his mind without a financial obligation, is that correct?

A. Mr. Ehrlich. There are some schools that operate in that fashion, yes, sir.

Q. Is that a common practice?

A. I assume there are a number of schools.

> now" and I show him FISL. Watch out world, here I come![115]

The use of this government program as a sales tool can best be summarized in the words of a former salesperson:

> I can go down in the ghetto and stand on the corner and enroll all kinds of people if it is free. He doesn't care if the course is airlines, insurance adjusting, hotel-motel management, or what, if it is free, if it is going to be paid for by the government and you can get him a job. He would have to be crazy not to do this. This is a salesman's dream.[116]

Frequently, the sales pitch used will combine job promises with FISL claims.[117] This is often accomplished by seizing

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[115] Sales memo to all salesmen for Bell & Howell in Region 14-22 (March 29, 1974). See Larry Van Dyne, "The FISL Factories," The Chronicle of Higher Education (August 4, 1975) Exhibit D-292 (emphasis in original). See also testimony of Wallace Kelly, former salesperson, Jetma, ECPI, Famous Schools, etc., Tr. 3426.

[116] Quoted in Larry Van Dyne, "The FISL Factories," The Chronicle of Higher Education (August 4, 1975), Exhibit D-292.

[117] For example, one student complained of this tactic setting forth the exchange which occurred between himself and the salesman:

> After describing the course of instruction to me (the salesman) said: "And this isn't going to cost you anything." "Nothing?", I asked "I'll get you a student loan. The government will pay for it." (The salesman said) "Don't I have to pay the loan back?" I asked. "Not until nine months after you've completed the course, you're already working by that time and making so much money that it's not a hardship to pay for it." Exhibit D-283.

See also, materials received from Boston Legal Assistance Project, Exhibit D-260; transcript of tape-recorded statement of Donald B. Lawson, Jr., former Computer Learning Centers loan interviewer, Exhibit D-231; letter from H. Young, Boston Legal Assistance Project, to K. Barna, Boston F.T.C. Regional Office (September 25, 1974), with demand for relief letters to ITT Technical Institute, Boston, Exhibit D-183; statement

(Continued)

upon FISL's nine-month delayed repayment scheme.[118] Under the repayment plan established under the FISL program, the student need not begin repaying his loan until he has been out of school for at least nine months. For example, one school's catalogue makes this claim:

> WHAT IS THE FEDERALLY INSURED STUDENT LOAN PROGRAM? You can attend ALBRIGHT COLLEGE and it will not cost you one cent until you have been out of school a minimum of nine months. You can get money for personal expenses such as transportation, supplies, and even for a baby sitter if this will enable you to attend school.
>
> ....Remember! You pay nothing until nine months after completion of your course. The U.S. Government has made this available to YOU; take advantage of it. Upon completion of your course ALBRIGHT COLLEGE will obtain employment for you.[119]

In other instances, it appears that the student was never informed that he or she was taking out a FISL loan, or that he or she was affirmatively deceived into believing the money to be other than a loan. The record contains numerous examples of FISL loans being explained away by salespeople as grants from the federal government which need not be repaid[120] or

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[117] (Continued)

of Blanche Gray, former student of Telco Institute (December 30, 1974), Exhibit D-234; LTV Educational Systems (Ling-Temco-Vought), Sales Training Manuals (1970), Exhibit E-15; letter from Linda B. Miller, former student of Draughon's Business College (June 11, 1975), with attachments, Exhibit C-240.

[118] _See_ discussion of the FISL program at Part I, Section VIII-B(2), _infra_.

[119] Examples of Misrepresentation of FISL as Scholarship, OE files, Exhibit D-18.

[120] Complaint and Affidavits filed with OE against Technical Education Corp. re: FISL, misrepresentation, refund, Exhibit D-23; "Loan Program Probed at Whiting College," _The Plain Dealer_, Cleveland, Ohio (September 4, 1974); "3 Students Sue Whiting," _The Cleveland Press_ (September 7, 1974); Complaint, William J. Brown, Attorney General v. Whiting Business College et al., Cuyahoga County Common Pleas Court, Case No. 74-933335, Exhibit D-189.

scholarships.[121] On occasion, FISL loans have been explained to prospective students as contest awards in "talent search" contests.[122]

Aside from these examples of outright deception, the evidence on the record suggests an almost overwhelming lack of understanding on the part of the students as to the nature of the obligation they are undertaking. The following picture was painted of the process of selling FISL by a supervisory collection officer from the Chicago Regional Office of the Office of Education:

> The salesman seems to rarely explain the student is signing for a guaranteed loan, much less explain what his signature on a promissory note means. Usually, the student believes, or is led to believe, that the government will pay the tuition cost.[123] ...
>
> Q. [Jon Sheldon]
> Now, how wide-spread is it that defaulters do not understand they have taken out a loan at all?
>
> A. I would say in a large majority of cases this is what the student tells us, and we can't prove, of course, that they were or were not told it was a loan, but it would seem that this isn't made clear because so many students do tell us they weren't aware.[124]

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[121] Examples of Misrepresentation of FISL as Scholarship, OE files, Exhibit D-18.

[122] Statement of Anne Whatley, former student of the Bryman School (December 27, 1974) with attachments, Exhibit D-226.

[123] Testimony of Jan Vogel, Supervisory Collection Officer, USOE, DHEW, Tr. 7758 at 7761.

[124] _Id._ at 7767. _See also_ letter from H.K. Watkins, Fresno County Legal Services, Inc., Fresno, California to R. Sneed, San Francisco F.T.C. Regional Office (November 22, 1974), re: Electronic Computer Programming Institute, Exhibit D-181.

In evaluating this statement, it is important to note that in her capacity as a supervisory collection officer she comes in contact with virtually every defaulting FISL holder in her region. In addition, in her testimony she indicated that in her discussion with other regions the same pattern was found.[125]

The FISL program has also led to random recruitment and little attention to student retention in the course. The president of one major residential vocational school stated:

> As you know, the FISL program became generally available and used in the vocational school industry during late 1968. It is distinctly visible now, with the usual hindsight, that the FISL Program insidiously provided the opportunity for proprietary vocational schools to depart from pre-FISL era practice of stressing the enrollment of stay-in-school oriented students. The FISL loan made it possible for many persons to go to school on credit who never before were so able. Secondly, the FISL Program made it exceedingly more convenient for anybody to go to school on credit. Thirdly, the FISL Program insidiously relieved the burden on the school salesmen in effecting an enrollment and relieved the burden of school management in maintaining a school full of active students. In short, the replacement of a drop-out with a new FISL-financed enrollment became easy, and a new way of life overnight in the business.[126]

As with FISL, the availability of veterans' benefits has added another powerful inducement the salesperson can utilize in enrolling students. Whatever natural resistance the consumer may have to incurring a large expenditure of his own money is quickly eroded by the lure of the federal government picking up the tab. For example, one school sent the following letter to veterans:

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[125] Id.

[126] Letter from M. Chandler, President and Chief Executive Officer, LTV Educational Systems, Inc. to USOE, Exhibit E-16. See also "The Knowledge Hustlers", Washington Post (June 23-26, 1974), Exhibit D-27; Mike Goodman, "Windsor U.--An Education in Bitterness", Los Angeles Times (March 19, 1975), Exhibit F-86; statement of Gerry S. Mussells, former vocational school salesperson (September 23, 1974), Exhibit E-213; testimony of Harold Holley, former salesperson, ICS (100 percent of all enrollees were FISL), Tr. 2751.

> If you are qualified, AATC [American Automation Training Center] can begin training you immediately for a responsible position with the computer field. UNCLE SAM WILL HELP YOU! IF YOU HAVE BEEN ON ACTIVE DUTY FOR 181 DAYS OR MORE, YOU CAN BEGIN TRAINING RIGHT NOW, PROVIDING YOU ARE QUALIFIED, AND THE VETERANS' ADMINISTRATION WILL PAY MOST OF THE COST ...Find out today if you can qualify for a computer career and how the VA will pay for most of your training.[127]

The advertising campaigns conducted by virtually all of the schools approved for veterans' benefits stress the availability of the federal money.[128] The sales manuals and training materials for salespeople stress the veteran as a prospect.[129] For example, a former salesperson testified concerning the impact of VA benefits:

> All of the schools that are authorized by the government to accept veterans under the VA Act seek veterans out diligently, for the simple reason that 90 percent of the tuition is going to be paid by Uncle

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[127] "Dear Serviceman" letter authorized by R. Streeter, Director of Education, American Automobile Training Centers, Exhibit E-221.

[128] See advertising copy, sales literature, and related documents of 200 member schools, NATTS, Exhibit E-64; advertising copy, sales literature, and related documents of 79 member schools, NHSC, Exhibit E-63. See also Weaver Airline Personnel School newspaper, classified sales ads, Exhibit D-108; form letter to veterans from Tom Marzella, Area Representative, Institute of Computer Management, Inc., Cleveland, Ohio, Exhibit E-250; letter to Senator John Tower with reference to sales practices of correspondence course salesmen (March 8, 1975), Exhibit E-221; "Attention All Veterans" Commercial Trades Institute Advertisement/postal reply card, Exhibit E-155; catalog (1972-74) and application, Rasmussen School of Business, Exhibit D-204.

[129] Frequently the sales training manuals will urge salesmen to seek out draft board listings of recently discharged veterans. See, e.g., testimony of Peter Farnum, former salesperson, Lafayette Academy, Tr. 2859; "Planned Sales Presentation for CREI Electronics Programs", A Division of the McGraw-Hill Continuing Education Center (April, 1972), Exhibit E-132; study of Operations and Administration of Private Trade and Correspondence Schools, Texas Education Agency (February 1963), Exhibit E-2.

> Sam....Implicit in the fact that the salesman has the VA forms...is that he is a representative of those agencies.[130]

However, while the industry has been quick to exploit the availability of the federal money, it has often failed to disclose to the prospective students the VA payment scheme. While the schools' advertising copy stresses that the VA will pay, it does not indicate that the VA only pays for those lessons actually completed or for that period of time during which the veteran is actively enrolled.[131] A GAO study found:

> About 31 percent of the veterans who did not complete their courses had not been aware that VA reimbursement would not cover all of their courses, and most of these veterans did not know that they had to request refunds that might be due them.[132]

Under the front-end loaded refund policies utilized by the accredited schools[133] the non-completing veteran almost always faces the prospect of having to pay additional sums to the school out of his own pocket.[134]

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[130] Testimony of Wallace Ralston, former salesperson for Famous Schools, Bell & Howell, and ICS, Tr. 400.

[131] See, e.g., John Aquilino and James Norrell, "Welcome Home, Soldier Boy; How Ex-Servicemen Get Defrauded in Their Search for Career Training," The Washington Star-News (October 8, 1972), Exhibit D-315.

[132] Report to the Congress, "Most Veterans Not Completing Correspondence Courses--More Guidance Needed from the Veterans Administration," Comptroller General of the United States, Exhibit H-10.

[133] Under the typical refund policies used by accredited schools, if a student attends one class or submits one lesson he is obligated for 25 percent of the total tuition; if 26 percent is completed 50 percent is owed; once 50 percent of the course is completed the full tuition is owed. For a further discussion, see Part I, Section VI-B(2), infra.

[134] "Correspondence Schools in the Military Market," Stars and Stripes, Exhibit E-51; see also "Summary of Responses to Questionnaire Sent to Veterans and Servicemen Who Had Received Educational Assistance from the Veterans Administration for Enrollment in Correspondence Courses as of June 30, 1970", Questionnaire Instruments, "Recap of Data Extracted From VA Records on Veterans and Servicemen Enrolled in Correspondence from June 1966 through June 1970," Exhibit

(continued)

Other abuses of the VA program exist as well. In frequent cases, it appears the decision to enroll in a proprietary vocational school course is fostered and encouraged by the school's offers of color televisions or stereo equipment as part of the course equipment.[135] The schools' awareness of this motivation is evident from the forms of advertising in which they engage.[136]

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[134] (Continued)

C-43 ($180 average).

[135] In its expose, Stars and Stripes noted:

> Many companies promote their courses with a heavy stress on expensive or eye-catching hardware which they would supply with the lessons. They seemed to include such equipment as much to sell the course as to enhance its educational value. In extreme cases they seemed to be selling equipment rather than education.
>
> If you buy and build the $599.95 GR-900 or $649.95 GR-2000 "Heathkit" sets from Heath directly, of course, you pay the full price yourself. If you're a serviceman or a veteran and acquired a modified "Heathkit" through Bell & Howell's $1,595 correspondence course, however, the GI Bill will cover 90 percent of your total course cost. (Exhibit E-51.)

[136] The Congress recognized this potential abuse of the VA program and passed legislation prohibiting advertising claims that had significant recreational themes, 38 U.S.C. 1723. However, this cannot prevent salesmen from orally inducing veterans to allow taxpayers to pay for their color TV sets. For example, one school ran the following advertisement:

> GOOD NEWS
>
> Vets Benefits Extended
>
> President Nixon signed legislation July 11, 1974 to give veterans an extra 2 years to use their education benefits.
>
> ...This bill is basically an extension of the existing GI education benefits--it does not contain restrictions against courses which include "color television sets" although I think such restrictive legislation will be

(Continued)

Another abuse involves the signatures of the military base educational counselor and base commander which are necessary to validate enrollment in a course for in-service military personnel. It is alleged that some school salespeople are engaging in forging of the necessary signatures.[137]

The use of federal benefits as a sales tool reaches unparalleled effectiveness when veterans' benefits and FISL are combined in a sales pitch. At that point the salesperson can tell the prospective student that he does not have to pay anything up front--that instead the individual can pay the school

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[136] (Continued)

> passed soon when the Senate and House iron out their differences on another bill which passed the Senate on June 19, 1974.
>
> Therefore if you are interested in learning electronics, now would be a good time to seriously look into it, for 2 reasons:
>
> 1. If you were discharged prior to June 1, 1966, you have only about 22 months left to complete your training...
> 2. If you feel you could get some sound "hands on" experience and knowledge by building and running experiments on a 25" solid state color TV, it is still available, in our course under the GI Bill.

Form letter to veterans from Bell & Howell Schools' Field Representatives, July, 1974, Exhibit E-239.

[137] "Correspondence School Salesmen--The Mind Twisters," Stars and Stripes, Exhibit E-51. ("All the salesmen knew full well that if the man was counseled by the adviser, he wouldn't buy. So they either had the prospect sign the form himself at the time or had him sign it later--without going to the counselor.") Id., "Getting on base--no great hurdle," (one salesman, two ex-salesmen, several education specialists and a VA spokesman independently offered a possible explanation: certification of counseling was simply being falsified.) Letter from A.J. Lamoreaux, Guidance Counselor, Army Education Center, to F.T.C. April 30, 1974, re: Columbia School of Broadcastings sales to veterans, Exhibit E-242.

back after he gets his high-paying job. In the meantime, the consumer gets VA benefits to use as spending money.[138]

Several of the largest schools seem to specialize in enrolling students under both programs. One school reports it has 49,784 students enrolled under both programs, another has 29,000 and yet another school has 57,233 so enrolled.[139]

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[138] In reality, the picture is not so rosy. If the student does not get a job, he has to pay the tuition anyway. Meanwhile the student may have spent his money from the VA and lost all or part of his VA entitlement. If he drops out, he will often owe the school significantly more than received from the VA.

[139] Attachments to testimony of J. Brown, National Home Study Council, Exhibit L-131. Contained in the exhibit are the responses of member schools to a number of questions including the following:

> Number of active students enrolled under both the G.I. Bill and the Guaranteed Student Loan Program.

The figure of approximately 142,000 was calculated by totaling the responses of the NHSC member schools to the question set out above. However, the 142,000 figure is somewhat short of the actual figure for NHSC enrollments. This figure (142,000) consists only of those schools responding to the above question with a figure lower than the stated enrollment figures for both GSLP financed enrollments and VA financed enrollments, respectively. In that manner we attempted to limit our calculation to schools who clearly attempted to state a figure for enrollments financed under both plans. At least 13 schools responded to the question by totaling their G.I. Bill enrollments with their GSLP enrollments. Accordingly, they were discarded. In addition, 39 schools responded that they did not participate in one program or the other.

These statistics are indicative of the haphazard manner by which the accrediting associations compile information on the schools they purport to regulate. In addition, the submission of the NHSC does not contain the names of the schools. Also note that this annual figure only reflects accredited home study enrollments. There is no available data on residential school enrollments under both programs.

The practice of enrolling students under both the VA and FISL programs is not unlawful. Both programs require that the student have a vocational objective; but after this threshold is met, the student is entitled to receive

(Continued)

D. The Role of Commissioned Sales Agents in Education

Earlier sections have shown that commissioned salespeople with no background in educational or career counseling have employed unfair or deceptive sales methods to enroll students in costly educational programs which purport to insure a rewarding career. Salespeople often enter a consumer's home and encounter a consumer who is unsophisticated and vulnerable by virtue of the fact that he has no real idea what career training he is interested in or suited for. During the course of this one-shot visit, the salesperson will frequently have succeeded in committing the consumer to a significant purchase decision--the signing of a binding enrollment contract.

The salesperson may have sold the course, not on its merits with adequate information and disclosure concerning placement and drop-out rates, but rather utilizing a sophisticated negative sell presentation including extensive use of the availability of federal money. The school has created a situation--through its hiring and training policies, bonus and commission structures, and inadequate supervision of sales personnel--where misrepresentations and deceptions flourish. The school has fostered an "enroll anyone, anyway possible" attitude.

The question arises--is the use of commissioned salespeople and canned sales presentations the proper way to enroll vulnerable students in educational programs involving important career decisions?

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[139] (Continued)

his maximum VA benefits and to incur the maximum statutory obligation under the FISL loan program. This is so irrespective of the tuition charges of the school or the financial status of the student. See Part I, Section VIII-C, infra for a description of both programs.

The double-enrollment of proprietary school students is a paradigm for the type of enrollment abuses that the proprietary school industry so often adopts. It reflects the degree to which these federal subsidy programs, adopted to assist low and middle income students to receive vocational training, have been misused to serve the private interests of school owners and some students. More importantly, however, it reflects the extraordinary arsenal of weapons that the federal government has made available to schools in order to assist them in enrolling thousands of students. These loans and VA benefits, particularly when combined, reduce normal consumer hesitance to enter into thousand-dollar contracts and allow schools to shift the cost of the purchase decision to unnamed taxpayers.

School owners themselves testified that they do not think so. One school representative stated he did not react favorably to such procedures.

> A. Well, I don't see it benefiting any student or person in the school. I don't know what positive gain there would be in doing something like that. I would have to be convinced that it is going to help one out, and I don't see that.
>
> Q. But assuming that you knew it would increase your enrollment?
>
> A. It is just not a simple question like that. We could go to the zoo and enroll a bunch of gorillas and increase the enrollment, but we have to have standards. I don't want to do what you are saying to do.[140]

Another school owner sees the use of salespeople as the major problem in the vocational school industry.[141] He had a commissioned salesperson working for him but found that more than half the students the salesperson enrolled created problems and in most cases the school decided to refund these students their money. Another school testified that its bad experiences with commissioned salespersons had induced it to experiment with other enrollment techniques.[142]

Other school owners described their own enrollment techniques. Besides not utilizing commissioned salespeople, their enrollment procedures did not involve a quick decision on first contact with the school.[143] Quite often a student would come to the school and talk to teachers and students. He or she would then, or at a subsequent visit, be tested. At an even later date, the consumer would be informed if he or she were accepted. These proprietary schools utilize enrollment procedures similar to those of many traditional academic institutions.

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[140] See testimony of Erik Brinson, representing the Missouri Schools for Doctors' Assistants and Technicians, Tr. 6737.

[141] See testimony of Reid Kennedy, Director of the Railway Education Bureau, Tr. 9615.

[142] See testimony of John Keller, attorney, United Systems, Inc., Tr. 3537.

[143] See testimony of Erik Brinson, representing the Missouri Schools for Doctors' Assistants and Technicians, Tr. 6712; testimony of Nancy Sedlak, owner, United Health Careers Institute, Tr. 5166 at 5195; testimony of William J. Parrie, President, Athena Beauty College, Tr. 5326 at 5327.

Schools utilizing commissioned salespeople as their first contact with the student want the individual to immediately choose his or her career and the means to train for it. Compare this procedure with those utilized by other educational institutions where, if a student is uncertain of his career and educational plans, he is not pushed into a binding contract, but instead can receive expert counseling.[144] Salaried guidance and career counselors, often with masters degrees, and who may be licensed by the state, are there to help with the decision. They will test the student to see where his or her real capabilities and interests lie and explain career and educational options. This is a very different scenario from that created by a commissioned salesperson. Not surprisingly, numerous guidance counselors have criticized the utilization of such salespeople in the selling of education.[145]

While commentators have described the impropriety of commissioned salespeople enrolling students in career-oriented educational programs, little has been done to limit such sales methods. The schools do not control and in fact often seem to encourage unfair or deceptive sales practices.[146] The states' regulation in this area is minimal.[147] Accrediting associations have virtually no effect on such practices.[148] This is not surprising since oral representations are difficult to prevent. A direct ban on such claims is hardly enforceable.

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[144] See, e.g., testimony of Dallas Smith, American School Counselor Association, Tr. 4276; testimony of Patricia Hooper, Coordinator, Guidance Services, American Personnel & Guidance Association, American School Counselors Association, National Vocational Guidance Association, Association of Counselor Education and Supervision, Tr. 5915; testimony of Howard Schofield, representing the Massachusetts Schools Counselors Association and the Massachusetts Personnel and Guidance Association, Tr. 507; testimony of John Walsh, President of the Greater Boston Guidance Club, Tr. 510; testimony of John E. Tirrell, Vice President for Government Affairs, American Association of Community and Junior Colleges, Tr. 2187; testimony of Darryl Laramore, Supervisor of Vocational Guidance, Montgomery County Schools, Maryland, Tr. 2960.

[145] Testimony of Patricia Hooper, Coordinator, Guidance Services, American Personnel & Guidance Association, American School Counselors Association, National Vocational Guidance Association, Association of Counselor Education & Supervision, Tr. 5915; testimony of Darryl Laramore, Supervisor of Vocational Guidance, Montgomery County Schools, Maryland, Tr. 1960; testimony of John E. Tirrell, Vice President for Government Affairs, American Association of Community and Junior Colleges, Tr. 2187.

Moreover, it appears that mandated affirmative disclosures acting alone may have little effect on unfair and deceptive salespeople. If required to disclose certain information during their sales presentations, most salesmen will have little trouble nullifying their effect or will even incorporate them into their sales presentations.[149]

For example, one experienced ex-salesperson for a number of major vocational schools described how he would get around mandated disclosures.

> But what might a professional do with the new proposal? Now I've been out of the field for over a year, but let me try a pitch. The student says I'm not sure that your school is right for me, your disclosure shows that no student has gotten a job from your school. Salesperson responds, yes, George, that's true what you read there. I must compliment you on your astuteness. Of course, these figures are required by law so they are imposed on us. Actually we've changed our direction recently and, in fact, our last class had more placements than before. With the job market opening up and in your particular case I wouldn't hesitate for a minute to insure you that you would be immediately employed, but, of course, the law simply doesn't allow me. Or another case, the student says I don't know about your school. Your disclosure says that you have no work experience to base potential employment upon.

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[146] See Part I, Section V-B, supra.

[147] See Part I, Section VIII-B, infra.

[148] See Part I, Section VIII-D, infra.

[149] See, e.g., testimony of Robert Zepernick, former salesperson, North American School of Conservation and Ecology, Tr. 3921 at 3934; testimony of Wallace Kelley, former salesperson, Jetma, ECPI, Famous Schools, etc., Tr. 3417; testimony of Richard Foss, former salesperson, Famous Schools, International Correspondence Schools, Tr. 614.

> The salesperson says, yes, George, what you're reading is correct. However, let me point out to you that this statement is merely one of a whole slew of statements that we are required by law to make. If we didn't make that statement, we'd have to keep ungodly statistics of such magnitude that we wouldn't be able to offer quality instruction at a low cost to you. We would rather put the money into education and placement efforts for you. If we didn't provide a superior placement service for our students, we simply couldn't remain in the industry or have accreditation by the VA and the state. As a matter of fact, our last class has done remarkably well. With your ability, George, I don't forsee any problem. Do you?[150]

The record shows that any actions the Commission takes in preventing unfair and deceptive sales techniques must take into account both the fact that commissioned salespeople are not proper instruments for objectively selling education and convincing evidence that traditional regulation of such salespeople has not been fully effective.

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[150] Testimony of Robert Zepernick, former salesperson, North American School of Conservation and Ecology, Tr. 3934.

VI. Drop-Out Rates and Refund Policies

A. Drop-Out Rates

As previously indicated, the proprietary school industry engages in a number of false, deceptive and unfair solicitation and enrollment practices to induce predominantly unsophisticated consumers to enroll in vocational courses. The extent to which consumers have been enrolled in courses for which they have no aptitude, in which they have no interest, or about which they have no accurate information, is often evident in a school's drop-out rate. As used throughout this proceeding and as applied in the proposed Rule, a drop-out is a student who has initially enrolled in and begun a course of study, but has failed to complete all of the requirements of that course considered necessary to graduate. The drop-out rate is the ratio of drop-outs to all initial enrollees.

The record is clear that students at proprietary schools fail to complete their courses at a remarkable rate. This section will discuss the drop-out rate phenomenon, its causes, and its relationship to the financial losses suffered by vocational school consumers.

At this point it is important that one major misapprehension concerning drop-out rates be corrected. Understanding of drop-out rates is essential, although not primarily because that rate somehow may allow one to identify "good" schools or "bad" schools.[1] Knowledge of drop-out rates is important for a much more basic reason--these rates do reflect the fact that, for whatever the reasons, a certain number of students who initiated their studies failed to complete them. For prospective students, knowledge of that fact allows them to assess the potential for completion for typical enrollees, to compare schools of similar size, and to gauge the school's performance in seeking and retaining initial enrollees.[2]

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[1] Industry members and others have misconstrued the purpose of the drop-out disclosures recommended in the proposed Rule. Assuming that the disclosure purports to be a measure of the quality of the school, the industry has gone on to argue elaborately and at length about the inappropriateness of such a measure. See, e.g., comments of the National Home Study Council, pp. 92-95, Exhibit D-439; brief of the National Association of Trade and Technical Schools, pp. 80-83, Exhibit K-520; initial comments of the Association of Independent Colleges and Schools, pp. 59-65, Exhibit K-867; comments of the National Association of State Approving Agents for Proprietary Schools, Exhibit K-784; comments of McGraw-Hill, Inc., Continuing Education Center, Exhibit K-900; testimony of M. Rasken, President of IBA Beauty Colleges, Tr. 6624; testimony of F. Albanese, Ohio Board of School and College Registration, Tr. 6672; testimony of M.S. Ritman, Gradwohl School of Laboratory Technique, Tr. 6796, 6806; testimony of W. Wright, American School of Correspondence, Tr. 7330.

Moreover, drop-out statistics provide a valuable tool for understanding and appreciating the extent of monetary losses incurred by vocational school consumers. The amount of monetary loss to consumers will be a function of both the timing of their withdrawal from the school, and the cancellation and refund policy applied by the school when the withdrawal occurs. Thus, drop-out statistics offer a gauge to evaluate the extent of monetary losses caused by the refund policies extant in the proprietary school field. For this reason, the discussions of drop-out rates and refund policies have been combined in one section of this Report.

1. Drop-Out Statistics

In correspondence schools, drop-out rates have been a matter of serious concern for some time. In one of the earliest studies of completion rates in home study schools, a special Presidential committee found that only 10.7 percent of veterans attending home study courses completed those courses.[3] This finding was verified many years later by the General Accounting Office (GAO). In its report to the Congress, the GAO detailed survey results which showed that 75 percent of veterans enrolled in home study schools failed to complete their courses.[4] The drop-out rates ranged from 96 percent in commercial arts courses to 36 percent in hotel and motel courses.[5]

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[2] See Part II, Section IV-C, *infra*.

[3] *Report of the President's Commission on Veterans' Pensions, 1956* (Bradley Commission Report), cited in Final Report on Educational Assistance to Veterans, p. 184, Exhibit A-4.

[4] "Most Veterans Not Completing Correspondence Courses--More Guidance Needed from the Veterans' Administration," Report No. B-114859 (March 22, 1972), Exhibit H-10.

[5] *Id.*, pp. 8-9. The VA continues to collect drop-out data on an annual basis. The most recently available figures show a substantial drop-out rate among veterans taking home study courses. *See* letter of December 5, 1974 from J.J. Malone, Chief Benefits Director, VA, to R.G. Badal, F.T.C., Exhibit H-149. For a complete listing of drop-out rates for veterans by type of course, *see Correspondence Courses, Chapter 34 and 35 Title 38, U.S. Code, Veterans' Administration, DVB/IB Circular 20-73-1 (1973)*, Exhibit H-75. The VA's most recent data show that the drop-out rate among veterans through 1974 was almost 60 percent. However, the drop-out rate would have been much higher if courses where equipment (*e.g.*, color TV's) (Continued)

These high drop-out rate statistics are not solely confined to veterans. In his study of correspondence schools, MacKenzie found that home study courses in general had 70 percent attrition rates.[6] Other evidence on the record concerning correspondence school enrollments shows that the industry-wide drop-out rate is well over 70 percent.[7]

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5 (Continued)

or combined residential training (e.g., truck driving) were eliminated. See Training by Correspondence Under the GI Bill: An In-Depth Analysis, VA (June 1975) pp. 4, 13 (hereinafter Training by Correspondence).

[6] Correspondence Instruction in the United States, American Council on Education (1968), p. 99, Exhibit A-97.

[7] Drop-out rate statistics are obtained from annual reports filed by member schools with the National Home Study Council. The data cited below were obtained by use of compulsory process and reflect enrollments in each school's most recent Annual Report. By agreement with the staff, the National Home Study Council deleted the name of each school and substituted in its place a number, which appears in the lefthand column below. The data, derived from Exhibit B-29,are for the largest schools:

School No.	No. of Active Enrollees	No. of Graduates
5	91,204	1,665
19	73,036	11,316
34	78,660	10,895
36	59,230	3,147
43	51,245	1,608
57	80,146	5,535
58	37,838	3,273
61	106,000	5,057
64	150,000	14,489
71	41,249	12,303
Totals	768,608	69,288

It is sometimes argued that these data do not reflect the actual drop-out rate since those who are actively enrolled may graduate in future years. Hypothetically this may be the case; however, the evidence shows otherwise. The most recent annual reports filed with the National Home Study Council show precisely the same types of figures--annual enrollments for the largest schools exceeding 737,000 with graduates totaling 104,000. See submission of the National Home Study Council to accompany the testimony of J. O. Brown, Exhibit L-131. (The schools involved are identified by the numbers 17, 21, 25, 46, 43, 47, 61, 62, 64, and 66, which are not the same numbers as (Continued)

Furthermore, figures generally used to tabulate drop-out rates fail to include an important category of students who enter into contractual obligations with their schools but never submit their first lesson--the "non-starts". By definition, non-starts have passed through the applicable state, federal, or private cooling-off period--and are thereby financially obligated for some portion of their fees--but failed to submit a lesson. According to the National Home Study Council's Annual Reports, 99,798 non-start students failed to begin their courses during a one-year period.[8] In evaluating the typical student's ability to complete a course of study, and in assessing the schools' enrollment practices, the non-start rate is an important corollary to the drop-out rate and provides a greater perspective on the extent to which consumers fail to complete their courses of study.

Because the very nature of study by correspondence would seem to enhance the potential for non-completion, one would expect that drop-out rates at residential vocational schools would be much lower than at home study schools. Yet very high non-completion rates are often found in the residential school sector as well. The graduation rate at a residential school will often vary with the type of courses taught. The Chicago Regional Office's survey of vocational schools in its region found graduation rates to be as follows: business and secretarial schools, 28.1 percent; trade and technical schools, 17 percent; and computer schools, 40.5 percent.[9] Reports on several business schools in Texas and Florida found equally few graduates among students on federally insured student loans.[10]

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[7] (Continued)

referred to above.) In other words, the number of graduates in any given year remains fairly constant and the ratio of graduates to total enrollees falls within the ranges established by the GAO and other studies. See also Report of the Committee on Veterans' Affairs, U. S. Senate, to Accompany S.2161, the Vietnam Era Veterans' Readjustment Assistance Act of 1972, Report No. 92-988 (1972), p. 51, Exhibit B-4.

[8] See Exhibit L-131, op. cit. Under NHSC's cancellation and refund policies each was obligated for a minimum of $50.00 See Part I, Section VI-B, infra.

[9] Statistical Analysis of Vocational School Questionnaires, memorandum of November 20, 1972, Chicago Regional Office, Exhibit B-15, document 2.

[10] Visitation Report, LTV Schools, AICS, undated, Exhibit B-77, and Status of Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program, USOE (1974), Exhibit H-201.

In order to ascertain the extent of student non-completion rates at residential schools, the staff obtained, by use of compulsory process, the enrollment figures of residential schools accredited by the Association of Independent Colleges and Schools (secretarial and business schools) and the National Association of Trade and Technical Schools (trade and technical schools).[11] These materials show that a substantial number of initial enrollees do not complete their courses. Figures for ten large schools from both the business and the trade and technical sectors show that less than 25 percent of the enrollees graduated during the year.[12] Although it is often difficult to derive comparative data from these accreditation materials due to the lack of rigid controls over the types of information provided by each school, it seems clear that many schools enroll many more students than they graduate. Even if it were assumed that students enrolled in one year might not graduate for several years,[13] and thereby distort the graduation rate statistics, there still would remain a disconcertingly large number of students who never complete their courses of study each year.[14]

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[11] Annual reports obtained by subpoenas duces tecum issued on May 3 and May 6, 1974 to the Association of Independent Colleges and Schools, Exhibit B-31, and the National Association of Trade and Technical Schools, Exhibit B-30. By agreement with the staff, AICS and NATTS deleted the name of each school and substituted a number. All figures are for the most recent year for which the annual reports of each organization were available. Moreover, as with the NHSC data described above, these figures do not include those students who never completed their first class--the non-starts.

[12] Annual reports of the Association of Independent Colleges and Schools show that ten schools had enrollments of 25,494 and only 4,818 graduates (school numbers 11, 50, 44, 104, 174, 219, 299, 383, 402, 418, 429). Annual reports of the National Association of Trade and Technical Schools show that ten schools had enrollments of 20,796 and only 5,073 graduates (school numbers 4, 93, 110, 124, 152, 158, 199, 230, 235, 241).

[13] This is not an assumption that is easily made. Studies have shown that residential school training, unlike the open-ended nature of correspondence study, is relatively brief. _See_ Wilms, _The Effectiveness of Public and Proprietary Occupational Training_, University of California, Berkeley (October 31, 1974), pp. 177-180, Exhibit C-110. Indeed, residential school representatives often cite the brevity of proprietary school training as one of its most appealing attributes. _See_ Brief of the National Association of Trade and Technical Schools, pp. 8-16, Exhibit K-520, and sources cited therein. _See also_ the discussion in Part I, Section II-B(4) _supra_ indicating that the average length of typical residential school courses is nine months or less.

Information on non-accredited schools is much less complete and thorough than the data outlined above for accredited schools. However, even in this sector, there appears to be a significant number of students who fail to complete their courses of study. In October, 1974 the Division of Special Projects disseminated over 300 questionnaires to a random sample of unaccredited schools. Among other issues, the questionnaire solicited information on the number of students enrolled in a two-year period, and the number who completed the course. The results show that, while completion rates vary from school to school, a substantial number of students fail to complete their courses of study.[15] The vast majority of these schools are residential schools.[16]

Moreover, as part of the Commission's advertising substantiation program in File No. 742-3161, Unnamed Opportunity Advertisers, identical questions about course completion were addressed to accredited and unaccredited residential and home study schools. Again, while results vary, a number of schools produced statistics showing that the overwhelming majority of students who initially enroll never complete their courses.[17]

2. Timing of Dropping Out

The available data on the total number of enrollees who fail to complete their courses demonstrate that many students drop out at some time during the course. However, the impact of schools' recruitment practices and refund policies is not adequately described by gross drop-out figures. On the contrary, the time during the course at which the student withdraws is equally important to an understanding of these practices and policies.

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[14] In its annual review of schools licensed in Indiana, the State Private School Accrediting Commission determined that 437,570 students were enrolled in the licensed schools, 108,623 dropped out, and 76,719 graduated. These data included both Home study and residential schools. See Clark, State of Indiana, 1974 Accreditation Renewals (1975), Exhibit L-83.

[15] Survey of Unaccredited Schools (October, 1974), Exhibit C-200.

[16] Id.

[17] Responses to Advertising Substantiation Letters (1974), File No. 742-3161, Exhibit C-210.

The General Accounting Office's review of home study schools found that 70 percent of enrollees dropped out and, of those who dropped out, over 30 percent withdrew within the first tenth of their courses, over 67 percent dropped out within the first third, and by the time the course was two-thirds completed, over 94 percent of all drop-outs had withdrawn.[18]

More recent data confirm these findings by the General Accounting Office. A composite picture of the timing of withdrawals at six large home study schools[19] showed the following: 89 percent of all the initial enrollees failed to complete the full course of study. Of those who dropped out, 33 percent had dropped out prior to completion of the first tenth of the course; 47 percent had dropped out before completing one-fifth of the course; and 60 percent had dropped out prior to completion of one-half of the course.[20]

Moreover, the attrition rates would be even more alarming if we were to include the "non-starts" in the data. For these six schools, almost 12 percent of those who had obligated themselves for the course never submitted the first lesson.[21]

While the pattern of the timing of drop-outs is less dramatic in residential schools, here too there is a tendency for students who do not complete their studies to drop out fairly early in the course of training.[22] One HEW audit of a proprietary business school found that 24 percent of its students dropped out in the first five percent of the course, 35 percent had dropped out prior to completion of one-tenth of the course, 60 percent had withdrawn prior to completion of one-quarter of the course, and 88 percent had completed half the course or less.[23] Other audits by HEW showed that these types of statistics were common among other residential schools.[24]

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[18] Statistics cited in *Report to Accompany S.2161, Vietnam Era Veterans Readjustment Assistance Act of 1972*, Report No. 92-988 (July 26, 1972), pp. 54-55, Exhibit B-4. It should be noted that these figures do not include non-starts--students who are obligated for a registration or similar fee but who have not yet completed a lesson or attended a class.

[19] Accrediting materials subpoenaed from the National Home Study Council, Exhibit F-64. These six schools (numbers 71, 67, 58, 46, 51 and 19) had active annual enrollments in excess of 414,000 students. *See* Exhibit B-29 (school numbers 39, 5, 19, 64, 41, and 43). *See also* Response to Accrediting Commission Questionnaire *re:* Drop Outs and Completion Rates of Weaver Airline Students, Exhibit B-52.

[20] *Id.*

[21] *Id.* It should be noted that under existing refund policies, non-starts do have financial obligations, generally in the form of down payments or registration fees.

[22] Testimony of M. Honor, President, Honor Business College, Tr. 3914-15.

3. Causes for Non-Completion

While it is clear that large numbers of students fail to complete their courses, and that this failure occurs early in their tenure at a school, the causes for non-completion are not always immediately apparent. Industry members argue that students drop out of their courses for a variety of personal reasons that are unrelated to the course of study and beyond the control of the school.[25] However, the size of the drop-out figures and the tendency for withdrawal to occur in the early stages of a course belies the notion that the drop-out phenomenon is explicable purely by recourse to factors not related to the school and its practices.

The record contains substantial evidence that many students withdraw because the course fails to conform to the representations of the school and its sales agents, and because students have been enrolled without adequate regard for their abilities and qualifications. As one U.S. Office of Education-sponsored investigation concluded:

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[23] Review of files of students at Marsh-Draughon School, HEW, Region IV (May 24, 1974), Exhibit H-192.

[24] See Status of Task Force Review of Florida Proprietary Vocational Schools Participating in the GSLP, USOE, HEW, Region IV (1975), Exhibit H-2301; visitation report, LTV Schools, HEW-AICS (undated), Exhibit B-77; audit report of Alverson-Draughon Business College, HEW, Region IV (December 31, 1974), Exhibit H-193.

[25] Comments of the National Home Study Council, p. 92, Exhibit K-439; testimony of R. Allen, Chairman, Accrediting Commission, National Association of Trade and Technical Schools, Tr. 9156; McGraw-Hill/CREI Production Report, Memorandum of July 10, 1972, Exhibit B-53; brief of the National Association of Trade and Technical Schools, p. 80, Exhibit K-520, initial comments of the Association of Independent Colleges and Schools, p. 59, Exhibit K-867; testimony of M. Rasken, President of IBA Beauty Colleges, Tr. 6624; testimony of F. Albanese, Ohio Board of School and College Registration, Tr. 6672; testimony of M. S. Ritman, Gradwohl School of Laboratory Technique, Tr. 6796; testimony of W. Wright, American School of Correspondence, Tr. 7330; testimony of J. Lynch, Control Data Corp., Tr. 7394; testimony of L. Howard, Michigan Organization of Private Vocational Schools, Tr. 7463; testimony of H. Rabin, Illinois Association of Trade and Technical Schools, Tr. 7487, 7505; testimony of (Continued)

> It is the conclusion of the review team that although many of the students withdrew from their courses prior to completion for early job procurement, military service, marriage, and moving to other cities, the major cause for the 56.8 percent withdrawal rate was deficient operations and conditions in overall school curricula, facilities, recruitment, instruction, management, and administration.[26]

As discussed in great detail in previous sections of this report,[27] proprietary schools engage in a number of false, deceptive, and unfair recruitment and enrollment practices. While that discussion will not be reiterated here, it is important to note that many of these practices result in the enrollment of many consumers who have neither the ability, nor the inclination, to complete their training. While many schools will purport to have rigid admission standards which serve to screen out all but the most highly qualified and motivated applicants,[28] the evidence demonstrates a prevailing attitude to enroll large numbers of students indiscriminately.[29] These students invariably face difficulty in completing their courses and ultimately

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[25] (Continued)

L. Broesder, Spartan School of Aeronautics, Tr. 7527, 7537; testimony of R. Diggs, Tr. 8180; testimony of A. Bunch, Mid-State College, Tr. 8196; testimony of T. Scully, Indiana Association of Private Schools, Tr. 8311.

[26] Visitation Report, LTV Schools, undated, p. 4, Exhibit B-77. The same set of factors were cited in a more recent USOE. review of accredited residential schools as associated with the high drop-out rate of those schools. Status of Task Force Review of Florida Proprietary Vocational Schools' Participation in the Guaranteed Student Loan Program (1975), p. 2, Exhibit No. H-201; see also Orlans, Private Accreditation and Public Eligibility, pp. 405-406, Exhibit D-21.

[27] See Part 1, Sections IV and V, supra.

[28] In the accrediting materials subpoenaed from each accrediting organization, each school is required to describe its enrollment and screening processes. The vast majority of all schools, both home study and residential, purport to have detailed and often intricate screening procedures. See the "Self Evaluation Reports" of schools that are members of the National Home Study Council, Exhibit F-64; the National Association of Trade and Technical Schools, Exhibit F-61, and the Association of Independent Colleges and Schools, Exhibit C-37.

[29] See Part I, Section V-B, supra for a detailed discussion of recruiting techniques used by salespeople employed by proprietary schools.

become part of the schools' sizeable drop-out rate.[30] As one commentator concluded:

> Correspondence schools with wide-open admissions policies can be thought of as using a marketing approach in specifying the student. The prospective student is assumed to know what he needs to learn and to be able to judge whether the course will meet his requirement. Many times prospective students simply are not in a position to evaluate a course or to know what skills, abilities, attitudes and knowledge are required to take it. Often they are sold a course rather than measured for it by specific, established criteria.[31]

This phenomenon is not confined to correspondence schools. In its investigation of proprietary vocational schools, the House Committee on Government Operations concluded that the same selling (as opposed to screening) attitude was found among residential schools as well as home study schools.[32]

The random recruitment of students does not occur in a vacuum. It is often associated with a series of misrepresentations or unsubstantiated claims that are used to induce students to enroll.[33] As students learn that these claims are inaccurate, they may become increasingly disposed to withdraw from the courses. Typical of the types of claims that may ultimately result in students dropping out of their courses are as follows:

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[30] See Status of Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program, USOE, HEW, Region IV (1975), Exhibit H-201; Visitation Report, LTV Schools, HEW-AICS, undated, Exhibit B-77; Review of Files of Students at Marsh-Draughon School, HEW, Region IV (May 24, 1974), Exhibit H-192; Audit Report of Alverson-Draughon Business College, HEW, Region IV (December 31, 1974), Exhibit H-193.

[31] MacKenzie, Correspondence Instruction in the United States, McGraw-Hill (1968), pp. 96-96, 131. Excerpts can be found in Exhibit A-97.

[32] Reducing Abuses in Proprietary Vocational Education, Twenty-Seventh Report, Committee on Government Operations, House Report No. 993-1649 (December 30, 1974), pp. 22-25, Exhibit H-168.

[33] Part I, Section IV, of this Report contains a description of the most prevalent types of enrollment claims.

1. Misrepresentations concerning the quality of the school's course, facilities, services, instructors and costs. This category includes claims about the size or experience of the of the school, its affiliations with well-known companies or training programs, the availability of expert instructors or guest lecturers, the size of its faculty and credentials of its teachers, and the source and quality of instructional materials.[34]

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[34] Numerous documents on the record pertain to the connection between students' decisions to drop out and the quality or cost of the course as portrayed by the school or its agents. Typical of these documents are the affidavit of H. Mitten, and others, regarding Austin College of Business, (August 21, 1970), Exhibit A-16; letters from the assistant district attorney of San Francisco and the Monterey County Department of Consumer Affairs; see also letter from Carol M. Hehmeyer, Assistant District Attorney, San Francisco, to F.T.C. SFRO (August 8, 1974), Exhibit A-63; and letter from P. W. Welch, Consumer Protection Specialist, Salinas, California, R. Sneed, F.T.C. SFRO (August 6, 1974), Exhibit A-62; statement of Tricia Convey, Costa Mesa, California, former student of Blair Colleges (November 6, 1974), Exhibit C-117; letter from former students of Transport Systems, Inc. (712-3572, Exhibit C-2362), Exhibit D-49; statement of James A. Sanders, Gresham, Oregon, former Ryder Technical Institute student (December 17, 1973), Exhibit D-178; interview reports with former students of Empire Schools (732-3407), Chicago Regional Office, Exhibit D-59; statement of Lowell M. Chodosh, San Francisco, California, former San Francisco School for Health Professions student (November 29, 1974), Exhibit D-179; letter from H. Young, Boston Legal Assistance Project, to K. Barna, Boston F.T.C. Regional Office (September 25, 1974), with demand for relief letter to ITT Technical Institute, Boston, Exhibit D-183; statement of Anne Whatley, former student of the Bryman School (December 27, 1974), with attachments, Exhibit D-226; letter from John W. Gunn, Attorney (January 9, 1975), with attachments, Exhibit D-239; materials received from Boston Legal Assistance Project, Exhibit D-260; letter from Charles E. Slater, Principal, Green Springs Elementary School, Ohio to Consumer Fraud Section, Ohio Attorney General's Office (February 15, 1973), re: Midwestern Tractor, Inc., Exhibit D-299; statement of Steven Chin, former LaSalle Extension University Student (November 15, 1974), Exhibit E-151; testimony of P. Paquette, New London Bar Association Legacy, Inc. (November 19, 1974), Tr. 227; testimony S. Newman, New York University Law School (December 4, 1974),

(Continued)

2. Misrepresentation of the availability of placement services and employment opportunities.[35]

3. Misrepresentations concerning the selectivity of the school's admissions program and the capabilities of the student,

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[34] (Continued)

Tr. 1497; testimony of M. Campbell, father of drop-out, unknown school (December 6, 1974), Tr. 1855; testimony of J. Vogel, supervisory collection officer, representative of HEW, Tr. 7767-68; testimony of L. Vincent, former investigator, Consumer Protection Center, Baton Rouge, La., Tr. 4249; letter from L. Miller (former student of Draughon's Business College), and related attachments, Exhibit C-240. For a fuller discussion of this form of representation, see Part I, Section V, supra.

[35] Typical of misrepresentations that fall within this category are student complaint documents found in the following: letter from T. W. Pulliam, Jr., San Francisco Neighborhood Legal Assistance Foundation, to R. Sneed, San Francisco F.T.C. Regional Office (August 15, 1974), Exhibit A-59; letter from David S. Dolowitz, Attorney, Salt Lake County Bar Legal Services, Salt Lake City, Utah, to F.T.C. SFRO (August 16, 1974), Exhibit A-64; "The Knowledge Hustlers", Washington Post (June 23-26, 1974), Exhibit D-27; interview reports with former students of Consolidated Systems (712-3077, D-8867), Exhibit D-47; interview reports with, and letters from, students of United Systems, Inc. (702-3182), Chicago R.O., Exhibit D-50; interview reports with students of Radio Broadcasting Associates, Jersey City, New Jersey, 1980-1, F.T.C. New York R.O. Exhibit D-51; statement of Dennis Oubre (former student of Ryder Technical Institute, Inc. (January 24, 1975), Exhibit D-251; letter from Stephen D. Loeber, Consultant, St. Louis BBB to Newman Guthrie, Federal Trade Commission, Kansas City Regional Office, re: Rapidway Systems, Indianapolis (truck driving school)(June 13, 1973), Exhibit D-262; testimony of L. Goldblatt, Legal Aid Society of New York (December 3, 1974), Tr. 1183. Moreover, the major elements of this form of misrepresentation are often built directly into the school's instructions to its sales agents. See Sales Training Manuals for Ling-Temco-Vought Educational Systems, Exhibit E-15. These misrepresentations often lead to students withdrawing from the course. See, e.g., Monterey County Department of Consumer Affairs letter, Exhibit A-62; student complaints against Blair College, Exhibit C-117; letter from the Better Business Bureau, Washington, D. C. to Bureau of Consumer Protection, F.T.C. (May 22, 1974), Exhibit D-19; memorandum to Robert Belair from Ann Stahl (October 7, 1974), re: enrollment of mentally retarded student in three vocational schools, Exhibit E-194. For a fuller discussion of representations concerning employment and earnings, see Part I, Section V, supra.

or the student's ability to benefit from the school's training. Previously we discussed the schools' policies of random recruitment and enrollment of many students. This often leads schools to misrepresent their screening process in order to induce consumers to believe that the school will enroll a select group of students. Having enrolled, the student often finds that the school has not been as selective as it had indicated and that previous education and training make the course too difficult (or easy) for the student. The individual thereupon drops out of the course.[36]

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[36] Typical of these types of representations are those contained in the documents found in statement from Joan Babcock, former student of Professional Investigators, Los Angeles, and LaSalle Extension University, Chicago (October 17, 1974), Exhibit D-218; "Summary of responses to questionnaire sent to veterans and servicemen who had received educational assistance from the Veterans' Administration for enrollment in correspondence courses as of June 30, 1970," questionnaire instruments, "Recap of data extracted from VA records on veterans and servicemen enrolled in correspondence from June 1966 through June 1970.", Exhibit C-43; letter from J. M. Maraldo, Directing Attorney, El Monte Legal Aid Office, to J. Doane, F.T.C. Los Angeles Regional Office (November 1, 1974), Exhibit A-71; letter from former student of Heald Business College (December 17, 1974), Exhibit C-165; statement of Sally Keville, former student, Control Data Corporation (January 10, 1975), Exhibit C-190; Neighborhood Consumer Information Center, summary of major consumer complaints, received by NCIC about Proprietary Vocational Schools (March 13, 1974), Exhibit D-20; statement of Blanche Gray, former student of Telco Institute (December 30, 1974), Exhibit D-243; *see, e.g.,* materials received from Boston Legal Assistance Project, Exhibit D-260; *Chicago Tribune* series on career schools (June 8 - June 13, 1975), Exhibit D-284; "The Education Hucksters," *Caveat Emptor, The Consumer Protection Monthly* (September 1974), Exhibit E-50; testimony of W. Ralston (November 20, 1974), Tr. 400; affidavit of Richard J. Zaiders, Jr., President and Principal of Technician Training School (October 1974), Exhibit A-45; testimony of R. Borden, former student, Electronic Computer Programming Institute (December 2, 1975), Tr. 3458; testimony of W. Kelly, former salesperson, Tr. 3419. For a fuller discussion of these types of claims, *see* Part I, Sections IV and V, *infra*.

It is interesting to note that at times students may be totally in the dark as to the extent or nature of previous education or training that may be essential to successful completion of a course. The GAO found that 75 percent of veterans

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4. Availability and Utility of Drop-Out Statistics

Information on the extent or scope of student withdrawals from a school's courses of study is generally unavailable to prospective students. Consumers seeking to obtain a general notion of the likelihood that they will complete their full course of study will be hard pressed to find any information on the matter.

This is difficult to comprehend, particularly in light of the fact that most, if not all, proprietary schools maintain complete records on the number of students who fail to complete their courses.[37] All the major accrediting associations require member schools to collect this data and to report it to the association on an annual basis.[38] Yet, despite the ready

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36 (Continued)

enrolled in home study schools had not been advised by the schools of any educational or experiential prerequisites to training. See, e.g., Most Veterans Not Completing Correspondence Courses - More Guidance Needed from VA, GAO Reports, B-114859 (March 22, 1972), Exhibit H-10. This same study found that over 70 percent of veterans dropped out of their home study courses.

[37] Throughout this proceeding, the staff has yet to encounter a school owner or manager who could not readily obtain detailed data on his school's graduation and drop-out rates. See, e.g., L. Ludel, American School of Diamond Cutting, Tr. 3284; S. Barnes, Broadcast Training, Inc., Tr. 3393; S. Burgess, Heald Business College, Tr. 3506; R. Annenberg, Western College of Allied Health Careers, Tr. 3524-5; G. Bay, Certified Welding School, Tr. 3681; R. Blair, Colorado Aero-Tech, Tr. 3720; M. Honor, Honor Business College, Tr. 3913; K. Binkle, Bay Valley Tech. Institute, Tr. 4752; H. Wosepka, Longview Business College, Tr. 5087.

[38] See Annual Reports of Member Schools of the National Home Study Council, Exhibit B-29; Annual Reports of the National Association of Trade and Technical Schools, Exhibit B-30; Annual Reports of the Association of Independent Colleges and Schools, Exhibit B-31; Survey of Unaccredited Schools (October, 1974), Exhibit C-200; Responses to Advertising Substantiation Letters, (1974), File No. 742-3161, Exhibit C-210. The Commission has yet to receive any evidence which would indicate that school owners, as part of their normal business operations, are not completely familiar with their non-completion rates. See Comment, The Proprietary Vocational School: The Need for Regulation in Texas, 49 Tex. L. Rev. 69, at N. 297, Exhibit G-22.

availability of this information, school owners do not, in fact, disclose it to their prospective students, and some go so far as to purposively conceal it from their students.[39]

The failure of schools to release this data persists despite a broad spectrum of individuals who agree that the information is relevant, material, and useful to student decision-making. The record contains numerous indications from students, consumer groups, state agencies, educators, counselors, school owners, and information experts that disclosure of drop-out rates would assist consumers in their pre-enrollment decisions.[40]

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[39] For example, in his testimony, W. Kelly, a former salesperson for Famous Schools, ECPI, and Jetma Technical Institute, responded to a question about disclosure of drop-out rates as follows:

> MR. KELLY: The salesman had better never mention the drop-out rate to any of our prospective students or he won't be working for us long. (Tr. 3438)

The counsel of the National Home Study Council testified that despite the fact that NHSC requires its member schools to report detailed noncompletion data in their annual reports he was not sure that such data would be material to student decision-making. Testimony of B. Ehrlich, Tr. 9381. This view is shared by other school owners who feel that the student is better off without the data. See testimony of R. Ellerbusch, Colorado Association of Private Schools, Tr. 3677. But see H. Wosepka, Longview Business College, Tr. 5087-88.

[40] See, e.g., testimony of J. Middleton, graduate of computer programming school, Tr. 1512. In its study of veterans who failed to complete their courses, the GAO found that 67 percent would have considered a different course, a different form of education, or would not have pursued any form of additional education at all if they had known their school's drop-out rate. GAO Report, Most Veterans Not Completing Correspondence Courses, pp. 9-10, Exhibit H-10; testimony of R. Borden, former student, Electronic Computer Programming Institute, Tr. 3464; testimony of A. Carter, former student, Heald Business College, Tr. 3493; testimony of S. Keeton, former student, Bryman Schools, Tr. 3582; testimony of W. Hyde, National Academy of Education, Tr. 3610-11; testimony of G. Belchick, California Department of Rehabilitation, Tr. 3781; testimony of S. Soenhel, San Mateo County Legal Aid Society, Tr. 4004-4005; testimony of T. Bogetich, California Advisory Council on Vocational Education, Tr. 4061; testimony of J. Wich, University of Oregon, College of Business Administration, Career Information Systems, Tr. 4213-14, 4225; testimony of L. Vincent, former investigator, Consumer Protection Center, Baton Rouge, La., Tr. 4252; testimony of D. Smith,

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The degree to which drop-out data are material to consumers' educational choices or are otherwise valuable as an evaluative tool is reflected in the serious efforts of commentators and federal agencies to require disclosure of such data to prospective students. Federal agencies are unanimous in their feeling that drop-out information is useful and should be disclosed to prospective students. The General Accounting Office recommended that the Veterans Administration provide drop-out data to veterans during counseling sessions.[41] The United States Office of Education recommended that such data be supplied by all schools participating in federal financial aid programs,[42] and has promulgated regulations which allow the Commissioner of Education to limit, suspend or terminate the participation of any school in the Guaranteed Student Loan Program when the school's drop-out rate exceeds 20 percent.[43] The Federal Interagency Committee on Education concluded that disclosure of drop-out rates was so important to prospective students that it should be made a prerequisite to schools' continued participation in all federal financial aid programs.[44] A national conference sponsored by the Education Commission on the States recommended that each school be required to provide prospective students with a "full institutional disclosure" which was defined to include drop-out rate information.[45]

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[40] (Continued)

American School Counselors Association, Tr. 4278-79; testimony of W. Butler, salesperson for Cleveland Institute of Electronics, Tr. 4904; testimony of H. Wosepka, Longview Business College, Tr. 5087-88. *But see* testimony of B. Ehrlich, Counsel to NHSC and NATTS (January 28, 1976), Tr. 9381-9383.

[41] GAO Report, *Most Veterans Not Completing Correspondence Courses*, p. 15, Exhibit H-10.

[42] *See* letter from P. Muirhead, Acting Commissioner of Education, to Senator E. Brooke (May 8, 1974), Exhibit H-84.

[43] "Federal, State and Private Programs of Low-Interest Loans to Students in Institutions of Higher Learning", 40 *Fed. Reg.* 7586 (February 20, 1975), amending 45 C.F.R., Section 177.66, Notice of Proposed Rule Making (45 C.F.R., Part 177), Guaranteed Student Loan Program, Office of Education, HEW, *Federal Register*, Volume 39, No. 202 (October 17, 1974), Exhibit H-160. The regulations reflect USOE's view that drop-out rates can be and are indicators of the performance of participating schools.

[44] *A Federal Stategy Report for Protection of the Consumer of Education*, FICE, Subcommittee on Consumer Protection (September 18, 1974), P. 52, Exhibit H-95.

[45] Consumer Protection in Postsecondary Education, Second National Conference Report No. 64, CS (November, 1974), Exhibit A-106.

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These proposals indicate that there is a serious lack of, and need for, data that would convey to students information pertaining to their typical chances for completing a course of study. Such data is integral to a consumer's decision, precisely because there are few readily identifiable attributes of vocational courses which would allow the consumer to evaluate the accuracy of the school's representations, or assess personal ability to benefit from the training being offered.[46] Particularly in light of the fact that there exists a relationship between a school's pre-enrollment practices and its ability to retain its students, consumers who are not fully aware of schools' non-completion and drop-out rates lack material information to make their purchase decision.

B. Refund Policies

When a student drops out or otherwise fails to complete a course of study, the amount of refund the individual will be entitled to (or the amount of any remaining obligation) will be determined by the applicable cancellation and refund policy utilized by the school.

The refund policy utilized by a school could derive from a variety of sources--state law, federal regulation, federal law, associational standards, or individual school preferences.

1. State Laws and Regulations

States vary widely in their approaches to the problem of vocational school refund policies. Review of the record indicates that, as of January 1975, six states had neither statutory nor administrative requirements for vocational school minimum refund policies.[47]

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45 (Continued)

See also the testimony of the authors of the Brooking Institution's *Report on Private Accreditation and Public Eligibility* before the Special Studies Subcommittee of the House Committee on Government Operations: H. Orlans, "The Protection of Students at Proprietary Vocational Schools", Exhibit H-90, document 4; and G. Arnstein, Exhibit H-90, document 5.

[46] *Reducing Abuses in Proprietary Vocational Education, op. cit.*, pp. 22-23, 44-45, Exhibit H-168.

[47] These states are Connecticut, Louisiana, Mississippi, Missouri, North Carolina, and Utah. The staff has entered on the record copies of all state laws and regulations pertaining to vocational schools. These laws can be found in Exhibit G-1, filed alphabetically by state. All references to state laws refer to materials in Exhibit G-1 unless otherwise specified.

Of the remaining 44 states, the type of refund a student obtains can vary widely. Many states simply do not provide the vocational school student with any substantive protection once the course begins.[48] In other states, a case-by-case settlement procedure is established to determine a student's refund.[49]

A number of states incorporate the refund policies of the industry accrediting associations in their regulations.[50] Colorado, Florida, Kansas, Michigan, Ohio, and Tennessee will accept any vocational school's refund policy (including those of unaccredited schools), if the school adopts the accrediting association's policy for that type of school. Arkansas, Kentucky, Oregon, Rhode Island, and South Carolina limit the acceptability of industry refund policies to those of accredited schools.

Vocational school refund policies in many of the remaining states are hardly more protective of the student. Without expressly invoking the standards of the industry associations, several states have set a refund standard that hardly differs from the refund policies of the major accrediting organizations.[51] In essence, these states mimic the accrediting associations' policies by requiring an initial cooling-off period, allowing the school to keep 10 percent of the tuition if the student cancels during the first week or two weeks, 25 percent of the tuition during the remainder of the first quarter of the course, 50 percent of the tuition during the second quarter, and the entire amount after the student passes the halfway point. The school is also allowed to retain a "registration fee" under these policies. Some states have designed refund policies which are even less favorable to the student than those of the industry association.[52]

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[48] For example, in New Hampshire and Vermont, the only state-imposed refund requirements consists of a brief cooling-off period, during which time a student may receive a full refund. However, once schooling begins, the school is free in these states to pursue its own refund policy. Delaware, on the other hand, provides for a 30-day grace period during which the student may recover 95 percent of his tuition, but does not specify any refund terms beyond that initial period.

[49] Arizona has a Board of Private Technical and Business Schools which in the event of a dispute makes a case-by-case refund award. The Board reports that it generally gives the student a pro rata refund, minus a $50.00 registration fee. Under the Arizona scheme the student bears the burden of coming forward and contesting the refund that the vocational school has given him. See correspondence from H. A. Shoberg, Executive Secretary, Arizona State Board of Private Technical and Business Schools, to Bruce L. Parker, F.T.C. (November 20, 1972), Exhibit G-1.

[50] Accrediting association refund policies are described in Part I, Section VI-B(2), infra.

[51] Georgia, North Dakota, South Carolina (for correspondence schools), and Wyoming fall into this category.

Finally, a small group of states has enacted refund standards that go beyond the minimum protection offered by the voluntary and associational standards set by the industry. These refund policies generally track the type of strict pro rata refund policy recommended by the Bureau in this Report.[53]

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[52] Nevada sanctions perhaps the harshest penalties for cancellation. While a Nevada student who cancels prior to the start of classes can receive a full refund, minus the lesser of five percent of the tuition or $50.00, once the course has started the school may retain 50 percent of the tuition if he withdraws during the first quarter. After the first quarter, there is no refund. California's minimum refund policy for resident vocational schools also requires no refund for the student after the first quarter of the course. New York allows for a seven-day cooling-off period, after which the school may retain 15 percent if the student cancels during the first week of the class, 45 percent during the remainder of the first quarter, 70 percent in the second quarter, and 100 percent if the student withdraws during the second half of the course.

Idaho has a similar refund policy. After a 72-hour cooling-off period, the school can keep $50.00 if the student cancels during the first week. Cancellation during the first quarter of the course entitles the school to keep 50 percent of the contract price. Cancellation during the second quarter enables the school to retain 75 percent of the tuition. After the halfway point is reached, the school is assured of the entire contract price. Virginia's refund standard is identical to Idaho's with the exception that Virginia dispenses with the cooling-off period, allowing the school to retain 15 percent of the course price, or $100.00, if the student cancels before classes begin, and treats the first week of schooling as a part of the first quarter.

[53] Wisconsin's refund provision is one of the more comprehensive and protective state regulations. The policy contains two refund standards. A full refund is provided when: (1) the student cancels within a three-day "cooling-off" period; (2) the student accepted was unqualified; or (3) the student's enrollment was procured as the result of any misrepresentations in a school's advertising or promotional material or by its salespeople. A partial refund is prescribed if the student cancels after the "cooling-off" period but 75 percent of the course has been completed. The school can retain no more than the exact pro rata portion of the total contract price that the length of the completed portion of the course bears to the total length of the course. However, this policy
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53 (Continued)

is qualified by the following:

(1) If a student cancels a home study course prior to submission of the first completed lesson, the surcharge may not exceed $50.00.

(2) If a student cancels in a resident course prior to the start of classes, the surcharge may not exceed $100.00.

(3) During the first week of classes of a resident course, the charge to the student may not exceed the larger of:

(a) The exact pro rata cost, or,

(b) $100.00.

(4) No refund is required during the last 25 percent of the course.

Minnesota, like several other states (Alabama, California, Illinois, Indiana, Maryland, Nebraska, Pennsylvania, South Carolina, and West Virginia), has different refund standards for residence schools and correspondence schools. In the spring of 1973, the Minnesota legislature enacted a refund standard that guarantees the student a pro rata refund, minus the lesser of 25 percent of the tuition cost or $100.00. This policy applies to the first 75 percent of the course, after which the school can retain the entire contract amount. Minnesota's standard for correspondence schools is the same as that for residence schools except that the maximum dollar amount retained by the school during the first 75 percent of the course cannot exceed $75.00.

Nebraska also bifurcates its treatment of residence and correspondence vocational schools. For residence schools, Nebraska allows the school to keep a $100.00 registration fee from the point of contracting. A novel aspect of this legislation is that the school may collect tuition money from the student only on a month-to-month basis. If the student cancels the contract, that month's tuition payment is forfeited. Correspondence schools must give the student a pro rata refund minus a $50.00 registration fee, provided the student withdraws during the first 75 percent of the course.

Indiana requires residence schools to give pro rata refunds, but allows correspondence schools to retain 10 percent of the tuition until the student completes 10 percent of the assignments, 25 percent until 25 percent of the assignments are completed, 74 percent until three-quarters of the course has run, and the full tuition after 75 percent of the assignments have been completed.

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Massachusetts is the only state which has enacted an unqualified, exact pro rata refund standard for all types of proprietary vocational schools. This policy closely tracks the refund requirement recommended in the proposed Trade Regulation Rule. The Massachusetts statute bolsters the consumer protection impact of its refund policy by requiring full disclosure of the students' right to cancel and receive a refund.[54]

2. Accrediting Association Refund Policies

For accredited schools, the minimum refund policy is established by the relevant accrediting organization.[55] The refund

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53 (Continued)

Six other states have minimum refund policies for both residence and correspondence schools which incorporate, at least to some degree, the principle of prorated reimbursement of unused tuition. Alabama (as to resident schools), the District of Columbia, and Hawaii specify that refunds must not vary more than 10 percent from a pro rata calculation. New Mexico allows for a strict pro rata return for the first half of the course, but requires no refund after the halfway point. South Dakota's pro rata policy applies to the first 75 percent of the course, after which no refund is required.

[54] The Act of June, 1974, by which the Massachusetts Legislature amended Chapter 255 of its General Laws, stipulates that the front side of every written contract between a student and a vocational school must contain the following notice in twelve-point, extra bold face type, capital letters:

1. You may terminate this agreement at any time.

2. If you terminate this agreement you will receive pro rata refund of the amounts paid for the entire course you are taking, based on the amount of time you have attended, provided, however, that you will also be responsible for actual reasonable administrative costs incurred by the school to enroll you and to process your application, which administrative cost shall not exceed fifty dollars or five percent of the contract price, whichever is less. A list of such administrative costs is attached hereto and made a part of this agreement.

3. If you wish to terminate this agreement, you must inform the school in writing of your termination, which will become effective on the day such writing is mailed.

[55] Accrediting associations allow members to voluntarily adopt a policy more generous to the student if they wish to go beyond the "minimum" policy.

policies established by the National Home Study Council (correspondence courses), National Association of Trade and Technical Schools (trade and technical programs), Association of Independent Colleges and Schools (secretarial and business courses), and the Cosmetology Accrediting Commission (cosmetology programs) are similar in their approach and generally observe the following format:[56]

> 1. if the student withdraws prior to the commencement of classes, a full refund of all monies other than an enrollment fee (usually a percentage of the contract price but not to exceed $100.00) is made. The enrollment obligation is thereupon subtracted from the refund as the student passes through the stages described below;[57]
>
> 2. if the student withdraws any time during the first quarter (25 percent) of the course, the student is obligated for 25 percent of the contract price.[58]

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[56] The cancellation and refund policies of the accrediting organizations can be found in: (Supplement to Operating Criteria for Accredited Institutions, AICS); document 3, Exhibit F-2; (Accreditation,Purposes, Procedures and Standards, Cosmotology Accrediting Commission, CAC); Exhibit F-6, Index to Documents, NATTS, document 1, Exhibit F-12;; and Accrediting Commission of NHSC, Refund Policy, NHSC, document 7, Exhibit F-20.

[57] The NHSC refund policy has a $50.00 enrollment fee limitation. It is important to note that in discussing "refund" policies here we are referring only to those students who have passed through any applicable state or federal cooling-off period without cancelling their contracts. Such students are generally referred to by industry representatives as "non-starts." However, all such students are obligated to pay the applicable enrollment fee.

[58] Both AICS and NATTS now allow a larger refund if the student withdraws during the first week of the course (the refund will be 90 percent of the tuition charges) and AICS has added an additional refund level if the student withdraws during the first three weeks of classes (the refund will be 80 percent of the tuition charges). However, AICS will retain 45 percent of the student's tuition if he drops out during the first quarter of classes. CAC, on the other hand, has adopted a more stringent policy at this stage. If the student withdraws any time during the first month of classes, the individual is obligated for one-half of his tuition.

3. withdrawal any time during the second quarter (50 percent) of the course produces an obligation of 50 percent of the tuition;[59]

4. if the student withdraws any time after 50 percent of the course is completed, the individual is entitled to no refund.[60]

Approximately 1,500 proprietary vocational schools which are members of accrediting associations are bound by these minimum standards, unless compelled to adopt some other standard under state or federal law.[61]

3. Other Sources of Refund Policies

In addition to refund policies established or recommended by state laws or accrediting association standards, several other sources of refund requirements should be mentioned. The most important of these have been established by Congress as part of the Veterans' Benefits Program.[62]

Congress has required that veterans attending unaccredited residential schools receive a strict pro rata refund--*i.e.*, one that is calculated on a class-by-class basis.[63] Moreover, Congress has determined that veterans attending correspondence schools (whether accredited or unaccredited) must receive, at a minimum, the refund that is recommended by the National Home Study Council for its own member schools.[64] There are no applicable standards for refunds required by Congress for veterans attending accredited residential schools. Approximately 3,500 unaccredited proprietary residential schools participate in the Veterans' Benefits Program and are thereby bound by the pro rata refund requirements of section 1776.[65]

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[59] Here again CAC varies by requiring that if the student withdraws any time during the second month of classes, the individual is obligated for 75 percent of the tuition. It should also be noted that AICS refund policy varies slightly from this format by allowing the school to retain 70 percent of the tuition if the student withdraws during the second quarter of the course.

[60] Accrediting Commissions often have a separate provision which allows for a more generous refund in special circumstances. NATT's policy is typical: "In the case of student prolonged illness or accident, death in the family or other circumstances that make it impractical to complete the course, the school shall make a settlement that is reasonable and fair to both." *Minimum Cancellation and Settlement Policy* 4B(4), NATTS Acrediting Materials (1972-73), Exhibit F-12.

[61] *See* discussion of accredited schools in Part I, Section VIII-D, of this Report.

[62] 38 U.S.C., Chapters 34, 35, and 36, described in detail in Part I, Section VIII-C(1), *infra*.

[63] 38 U.S.C., Section 1776.

Another federal refund standard can be found in the U.S. Office of Education's recently adopted regulations for all types of schools--proprietary vocational, community college, university, etc.--participating in the Guaranteed Student Loan Program.[66] These regulations do not specify the exact refund to be given, but caution that it be "fair and equitable". In determining the fairness and equity of a refund policy, USOE has stated that it will give weight to the following factors:

> (1) Whether the refund policy takes into consideration the period for which tuition and other required fees and room and board charges were paid;
>
> (2) Whether the refund policy takes into consideration the length of time the student was enrolled at the institution;
>
> (3) Whether the refund policy takes into consideration the kind and amount of instruction, equipment and other services provided over the periods described in Paragraphs (b)(1) and (2) of this section;
>
> (4) Whether the refund policy produces refunds in reasonable and equitable amounts when the considerations described in Paragraphs (b)(2) and (3) of this section are compared with that described in Paragraph (b)(1) of this section;...
>
> (5) Whether the refund policy of the institution is mandated by state law; and
>
> (6) Whether, in the case of an accredited institution, the Commissioner has approved the refund policy requirements of the pertinent accrediting body.[67]

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[64] 38 U.S.C., Section 1786. It should be noted that Section 1776 has no provision for an enrollment or registration fee while Section 1786 allows that school to retain up to $50.00 as a registration fee.

[65] See Part I, Section VIII-C(1), infra.

[66] "Federal, State and Private Programs of Low Interest Loans to Students in Institutions of Higher Learning," HEW, USOE, 40 Fed. Reg. 7586 (February 20, 1975), 45 C.F.R., Section 177.63(a).

[67] 45 C.F.R., Section 177.63(b)(1)-(b).

It is unclear precisely what types of refund policies will be required under these new regulations. However, the fact that the Commissioner of Education must take into account whether an individual school's refund policy is already required by state law or accrediting association standard does not augur well for for radical departures from extant refund policies.[68]

HEW's Office of Education has also established a separate refund policy for unaccredited schools that have been provided a special allowance to participate in the Guaranteed Student Loan Program (GSLP).[69] The 500 unaccredited schools that have obtained this special permission are required to provide their students with a strict pro rata refund as a precondition for participating in GSLP.[70]

In additon to the refund policies established at the federal level for the veterans' benefits and GSLP programs, in 1972 the Federal Trade Commission announced a Proposed Statement of Enforcement Policy for vocational school refunds.[71] Growing out of the hearings on a proposed set of Guides for Private Vocational and Home Study Schools,[72] the Enforcement Policy called for:

1. registration fees of five percent of the price of the course but not to exceed $50;

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[68] Indications are already present that accrediting associations view their refund policies as "fair and equitable" without further changes. See Supplemental Comments of the Association of Independent Colleges and Schools (November 21, 1975), p. 39, Exhibit K-867; testimony of Coleman Furr, Director of Coleman College, Tr. 6943, 6946-47; testimony of R.A. Fulton, Executive Director of the Association of Independent Colleges and Schools (January 27, 1976), Tr. 9001; testimony of W. Fowler, Executive Director, National Home Study Council (January 27, 1976), Tr. 9091; testimony of C. Mohling, Merritt-Davis Business College (December 10, 1975), Tr. 4813.

[69] As described in greater detail in Part I, Section VIII-C(2), infra, a school's participation in the GLSP is generally predicated upon prior accreditation by a nationally recognized accrediting agency.

[70] See USOE refund regulations for schools under FISL accrediting criteria and USOE proposed refund rules, Exhibit F-20, document 1; Unaccredited Flight Schools eligible to participate in GSLP, Exhibit H-15; and Unaccredited Cosmetology Schools eligible to participate in GSLP, Exhibit H-16.

[71] Cancellation and Refund Practices of Private Schools, Proposed Statement of Enforcement Policy (May 2, 1972).

[72] 16 C.F.R. Part 254.

2. the consumer to be obligated for the fair market value of any equipment he fails to return in a condition suitable for resale; and

3. a pro rata refund.[73]

Finally, some individual school owners have adopted strict pro rata refunds where laws or regulations do not otherwise prohibit or require it. The reasons for this voluntary use of pro rata vary from school to school, some finding it fairer to their students, others feeling it most consistent with the methods by which they have organized their courses of instruction, and still others finding it to be a successful sales device.[74]

4. Cancelling the Enrollment Agreement

This section will examine various aspects of the cancellation procedures proprietary schools presently invoke. It will be seen that the nature of these procedures is just as critical in determining a student's actual refund as is the policy used to calculate the refund. Five issues will be examined:

(1) Are students informed of their right to cancel and are they given information on how to obtain their refunds?

(2) How does the student go about cancelling an enrollment agreement?

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[73] The pro rata refund requirement applies only to those contract charges that are expressly set aside for tuition fees. It does not apply to separately charged equipment or supplies. There is no information on the number of vocational schools which have voluntarily adopted the refund policy recommended by the Commission.

[74] See testimony of R. Zaiden, Technician Training School, Tr. 1946; testimony of L. Ludel, American School of Diamond Cutting, Tr. 3284-85; testimony of J. Keller, United Systems, Tr. 3550; testimony of G. Bay, Certified Welding School, Tr. 3690; testimony of C. Litzo, Divers Institute of Technology, Tr. 4863; testimony of B. Jackson, American Vocational Schools, Tr. 5789; testimony of R. Alloway, California Barber College Association, Tr. 5896; testimony of H. Katz, Coyne American Institute, Tr. 8251; testimony of H. Herzing, Wisconsin Council for Independent Education and Herzing Institutes, Tr. 8451; testimony of Hoggesteger, Vice President for Education representing Advance Schools, Inc. Tr. 8830; testimony of W. Hough, College of Advanced Traffic, Tr. 8911 (veterans only); testimony of R. Stuart, Art Instruction School, Tr. 5468 (for first two-thirds of the course); testimony of L. Singer, President, Technical Home Study Schools, Tr. 1218.

(3) When does cancellation become effective?

(4) Are schools under any contractual obligation to make refunds on a timely basis?

(5) Are these standards being enforced?

Otherwise equitable refund policies can become unfair if students are not informed about their right to cancel, if notifying the school of cancellation places an undue burden on the student, if the effective date of cancellation does not correspond with the date of withdrawal, or if the refund owed is not made within a reasonable period after cancellation.

Schools' cancellation procedures often must meet minimum standards set by accreditation commissions and federal and state regulatory agencies. However, standards set by these agencies are, on the whole, rather permissive and schools, for the most part, are given wide discretion in designing their cancellation policies.

(a) Right to Cancel and Manner of Cancellation

All four accrediting agencies (NHSC, NATTS, AICS and CAC) require that the prospective student be informed, in writing, of the right to a refund in the event of a withdrawal from the school.[75] Moreover, the mechanics of cancellation--the manner in which the school must be notified and the effective date of cancellation--must be set forth in the enrollment agreement or school catalogue.

Under NATTS, AICS, and CAC accreditation standards, schools may require cancellation and requests for refunds be made in writing. NATTS permits its member schools to require that notice of cancellation be sent by certified or registered mail, if stated in the enrollment agreement. Correspondence schools accredited by NHSC must honor all requests for refunds--written or verbal--if made within 72 hours after enrollment. Thereafter, the school may require that cancellation be made in writing. NHSC also requires schools to automatically cancel students who do not submit a lesson for 90 days during the first six months of the course.[76]

Although several enrollment agreements and catalogues of unaccredited schools did not provide the prospective student with any information on how to cancel or obtain a refund, most enrollment agreements, even for unaccredited schools, do contain this information. A random examination of unaccredited school contracts revealed that there were variations in the actual cancellation procedures. An overwhelming majority of unaccredited schools require that cancellation and requests for refund be made in writing. In addition, some schools require that notice of cancellation be sent by registered and/or certified mail. Other schools have special additional requirements.[77]

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[75] NHSC, Documents and Instructions of the Accrediting Commission, Exhibits F-32 and L-131; NATTS Cancellation and Settlement Policy, Exhibit F-12; AICS, Operating Criteria for Accrediting Institutions, Supplement, Exhibit F-2; CAC Accreditation, Purposes and Procedures, Exhibit F-6.

[76] NHSC, Documents and Instruction of the Accrediting Commission, Business Standards, Exhibits F-32 and L-131.

All schools which participate in the Veterans' Benefits or FISL programs must comply with the cancellation and refund policies established by the respective government agencies. VA regulations do not establish any guidelines governing the mechanics of cancellation and settlement policies in the enrollment agreement for home study schools.[78] FISL regulations also require that the procedures for obtaining refunds be made known to the student in writing prior to enrollment. However, the administrative rule does not dictate the manner in which notice of cancellation must be made to the school.[79]

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[77] Unaccredited Proprietary Vocational Schools' Responses to Information Request, Exhibit C-200. Several enrollment agreements stated that only refunds must be requested in writing. Thus, the language of these contracts implied that, while a verbal notification of withdrawal is effective, a student will not receive a refund, unless it was demanded in writing. Moreover, some schools required that the written request be submitted within a specified time period after cancellation. See, e.g., the enrollment agreements for Computer Processing Institute and Bryman Nursing Schools, Exhibit C-200. This double standard could be used by unscrupulous schools to swindle an unknowing student out of a refund. For example, Mr. X, a student of ABC Trades Schools, telephones the school to inform them of his withdrawal. Although ABC accepts Mr. X's cancellation, Mr. X is not advised that refunds must be requested in writing within 30 days of cancellation. Believing, however, that his verbal cancellation automatically entitles him to refund, Mr. X waits for his money to be sent by the school. Having received no refund, Mr. X, several weeks later, contacts the school and inquires about his refund. He is then informed that all requests for refunds must be made in writing. Mr. X promptly demands a refund in writing; however, he is now told that he is not entitled to a refund because the request was not submitted within 30 days of cancellation as provided by the enrollment agreement. Mr. X may have no valid cause of action against ABC, since it was he, and not the school, who failed to comply with the provisions of the contract.

[78] 38 C.F.R. Section 425.6 See also 38 U.S.C. Section 1786.

[79] 45 C.F.R. 177.63(c).

Proprietary vocational schools are also subject to the laws and regulations promulgated by state legislatures and administrative agencies. Although the past decade has witnessed increasing state regulation in this area, relatively few states have sought to regulate cancellation procedures. The majority of states have simply incorporated, by reference, the cancellation and refund policies of accrediting agencies recognized by the Office of Education.[80] However, the Massachusetts statute bolsters the consumer protection impact of its pro rata refund policies by specifying in detail and mandating the language of the required disclosure of the students' right to cancel and receive a refund.[81]

Most states which have specifically enumerated the mechanics of cancellation require that notice be given in writing. Wisconsin, however, is an exception. There, the student may cancel by telephone, telegram, letter or by merely ceasing to attend classes or submit lessons. Wisconsin also prescribes that schools present students with a "customer's right to cancel" form that facilitates withdrawing from the school.[82] Another state, to circumvent fraudulent claims that notice of cancellation was not received, requires schools to acknowledge, in writing, receipt of valid cancellation notices. The acknowledgement must be mailed within 10 business days after the cancellation notice is received.[83]

(b) Effective Date of Cancellation

Once notice of withdrawal is given, it is necessary to determine the effective date of cancellation. The effective date of cancellation determines the amount of refund owed.

CAC and NHSC offer no guidelines for making this determination.[84] The date of withdrawal for AICS institutions is the date of last recorded attendance.[85] NATTS provides a two-prong standard.[86] The date of student withdrawal is seven calendar days after the last date of recorded attendance, unless earlier written notice is given. Where earlier written notice is given, the date of withdrawal is the day notice is received by the school.

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[80] See, e.g., Colorado, Florida, Kansas, Michigan, and Ohio statutes, Exhibit G-1.

[81] See note 54, supra.

[82] Wisconsin Administrative Code, Chapter 5.02, Exhibit 61. See also statement by David R. Stucki, Executive Secretary, Wisconsin Educational Approval Board, Tr. 8502.

[83] Minnesota Statutes, Exhibit G-1.

[84] CAC Accreditation, Purposes and Procedures, Exhibit F-6. NHSC Documents and Instructions of the Accrediting Commission, Exhibits F-34 and L-131.

[85] AICS Operating Criteria for Accrediting Institutions, Supplement, Exhibit F-2.

[86] NATTS Cancellation and Settlement Policy, Exhibit F-12.

Unaccredited schools used several methods of determining the effective date of cancellation. School contracts designate the last date of actual attendance, the date written notice of cancellation is postmarked, or received by the school.[87]

Under FISL regulations, resident vocational schools must deem either the date on which the student notifies the school of withdrawal or the date of expiration of a 30-day period during which the student does not attend any classes, whichever is earlier, as the effective date of cancellation. In the case of correspondence schools, cancellation automatically occurs 60 days after the due date of a required lesson which the student failed to submit.[88] Under most state laws, cancellation becomes effective the date the notice is postmarked, or if hand-carried, the date the notice is delivered to the school.[89]

(c) Payment of Refunds

Proper cancellation of an enrollment agreement does not ensure timely payment of any owed refund. Student letters written to the Office of Education and the Federal Trade Commission often complain about schools failing to make appropriate refunds.[90]

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[87] Unaccredited Proprietary Vocational Schools' Responses to Information Request, Exhibit C-200.

[88] 45 C.F.R. Section 177.63(c)3. For the purposes of Section 177.63(c)3, correspondence schools must establish a schedule of the number of lessons in the course, the intervals at which the lessons are to be submitted, and the date by which the course is to be completed. The schedule must conform to the requirements set forth in Section 177.1(g)2 and must be furnished to the student prior to enrollment.

[89] *See, e.g.*, Massachusetts, Minnesota, Wisconsin, and Illinois *Statutes*, Exhibit G-1.

[90] Student complaint letters, Exhibit J-1; *see also* letter from John F. Hart, Sealer of Weights and Measures, County of Humboldt, Eureka, California to F.T.C. SFRO, dated August 5, 1974, Exhibit A-65; Summary of Experience with Proprietary Vocational and Home Study Schools, submitted by Gill Graham, San Francisco Lawyer's Committee for Urban Affairs (August 19, 1974), Exhibit A-66; letter to Dana Hart, AICS, from John R. Proffitt, USOE (June 12, 1973), Exhibit H-74; Complaints Against Institutions Accredited by the Accrediting Commission for AICS received by OE, Exhibit C-6; interview

(Continued)

An enrollee of a truck driving training course sought a refund of $195.00 from the school upon learning of ineligibility under ICC regulations to drive a truck, since the enrollee only had one eye. Although the school assured the complainant a refund would be forwarded, no refund was ever made.[91] Often, student accounts are satisfied only after the intervention of a third party such as the Better Business Bureau, States' Attorney Offices or Legal Aid groups.[92]

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90 (Continued)

reports with former students of Federal Training Service, Inc. (702-3387) Atlanta Regional Office (October 1971), Exhibit C-31; interview reports with former students of Consolidated Systems (712-3077), D-8867, Exhibit D-47; letters from students of Transport Systems, Inc. (712-3572, C-2362), Exhibit D-49; interview reports with, and letter from, students of United Systems, Inc. (702-3122), Chicago R. O., Exhibit D-50; BBB of Hawaii, Inc., Summary of experience with Proprietary Vocational and Home Study Schools (January 1974 to August 1974), Exhibit D-146; affidavit of Lawrence E. Scott, father of former Commercial Trades Institute student (October 10, 1974), Exhibit D-158; *op. cit.*, Exhibit D-146; statement of Charles Duncan (former student of New England School of Investigation (December 6, 1974), Exhibit D-262; letter from H. K. Watkins, Fresno County Legal Services, Inc., Fresno, California, to R. Sneed, F.T.C. SFRO (November 22, 1974), re: Electronic Computer Programming Institute, Exhibit D-181; Miriam Ottenberg, "Pay and Be Assured A Government Job?", *The Washington Star* (April 16, 1972), Exhibit D-309; State of Iowa v. Interstate Keypunch Institute of Des Moines, Inc., *et al.*, Petition for Injunction and Restoration of Money (December 7, 1972), Exhibit D-310; Statement of Frank A. Micheletti, former Bell and Howell Schools student (November 14, 1974), Exhibit E-150.

[91] *See, e.g.*, interview reports with, and letter from, students of United Systems, Inc., Exhibit D-50.

[92] *See, e.g.*, statement of Sarah Benton, St. Helena, California, former West Coast Trade Schools student (September 23, 1974), Exhibit D-138; letter from Jan Nixon, Better Business Bureau of Southern Nevada, Inc., to F.T.C. SFRO (August 27, 1974), with list of vocational student complaints, Exhibit D-140; letter from B. Wallace, Consumer Affairs Deputy, Marin County Human Relations Department, San Rafael, California, to R. Sneed, F.T.C. SFRO (August 12, 1974), Exhibit D-151; letter from H. W. Samson, Boston Legal Assistance Project, to K. Barna, F.T.C. Boston Regional Office (July 10, 1974), with demand for relief letter to Electronic Computer Programming Institute, New York, New York (July 8, 1974), Exhibit D-182; letter from H. Young, Boston Legal Assistance Project, to K. Barna, F.T.C. Boston Regional Office (September 25, 1974),
(Continued)

Nevertheless, of the four accrediting agencies, only NATTS and NHSC mandate that the money due the student be refunded within a given time period--in this case within 30 days of the effective date of cancellation.[93] Likewise, only a handful of unaccredited schools promise to return the unused portion of the tuition within a specified time period. Recently, the Office of Education and several states have placed vocational resident and correspondence schools under a statutory duty to make refunds within a specified time period. FISL regulations now require refunds to be made within 40 days of the student's withdrawal.[94] Wisconsin requires that refunds owed by the schools be paid within 10 business days of cancellation.[95]

(d) Enforcement of Existing Standards

Whatever protection these private, state and federal regulations concerning cancellation procedures purport to offer consumers, they have often been ineffective because these same agencies have failed to enforce existing regulations. An investigation of the proprietary resident and home study industry by the Office of Education during 1974 and 1975 revealed extensive violations of AICS, NATTS, and NHSC accreditation standards.[96] Often, no attempts were made by the school to locate students entitled to refunds. Tuition refunds, when given, were not made on a timely basis, with delays ranging from 10-34 months.[97] A task force report on Florida proprietary vocational schools

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[92] (Continued)

with demand for relief letters to ITT Technical Institute, Boston, Exhibit D-183; Bureau of Social Science Research, Inc., correspondence re: vocational schools, Exhibit D-188; statement of Charles Duncan, former student of New England School of Investigation (December 6, 1974), Exhibit D-262.

[93] NATTS Cancellation and Settlement Policy, Exhibit F-72; NHSC documents and instructions of the Accrediting Commission, Exhibits F-34 and L-131.

[94] 45 C.F.R. 177.63(c)(2).

[95] *See also* Minnesota statutes at Exhibit G-1.

[96] Audit on Alverson-Draughon Business College, Birmingham, Alabama, HEW, Region IV (December 31, 1974), Exhibit H-193; "Widespread Fraud in Student Loans Alleged in Texas," *Phoenix Gazette*, Exhibit H-194; "Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program," Office of Education, HEW, Region IV, Atlanta, Georgia, Exhibit H-201.

[97] *Id.*

noted that there were several instances where schools simply ignored a student's cancellation in order to reduce the amount of refund owed.[98] One school held a student, who had enrolled but never attended, in a temporary drop status, so as to enable the school to collect 20-30 percent of the tuition. Another institution, accredited by AICS, assigned the last day of the quarter as the student's withdrawal date, instead of the last date of actual attendance, as mandated by AICS accreditation standards. Consequently, a student who withdrew from the school during the first week of the quarter was charged tuition for the entire quarter. Moreover, no refund was offered by the school, unless it was personally requested by the student.[99]

C. The Costs of Existing Refund Policies

The various cancellation and refund policies described above, all purportedly adopted to strike a reasonable and fair balance between consumers and schools, have resulted in large financial losses and attendant harsh consequences for consumers. Even if it were assumed that the policies were uniformly enforced so that schools were not permitted to fall back to more onerous policies,[100] it is clear that existing refund policies produce significant losses for consumers.

As discussed previously, the very factors which cause many students to withdraw from their courses are likely to come into play during the first few lessons or classes--course materials are too difficult or too easy, course facilities are not as represented, etc.[101] Even if it were assumed that all withdrawals are caused by factors unrelated to the school[102] and its representations, two results are clear: (1) large numbers of students who begin proprietary school classes never complete them; and (2) those who do not complete their courses drop out in the early stages of those courses.[103]

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[98] Op. cit., Exhibit H-201.

[99] Audit on Alverson-Draughon Business College, Birmingham, Alabama, HEW, Region IV (December 31, 1974), Exhibit H-193.

[100] But see Berry and Dunbar, "The Proprietary Vocational School: The Need for Regulation in Texas," 49 Texas L. Rev. 69, 112, Exhibit G-22; Status of Task Force Review of Florida Proprietary Schools Participating in GSLP, HEW, USOE (1975), Exhibit H-201.

[101] See, e.g., testimony of J. Epstein, Mercer County Legal Aid Society (December 5, 1974), Tr. 1678; letter from J.M. Maraldo, Directing Attorney, El Monte Legal Aid Office, El Monte, California to J. Doane, F.T.C. Los Angeles Regional Office (November 1, 1974), Exhibit A-71, and letter from M.H. Flam, Staff Attorney, El Monte Legal Aid Office, El Monte, California, to J. Doane, Los Angeles F.T.C. Regional Office (October 29, 1974), Exhibit D-164; complaints filed against Career Enterprises, Inc., in Superior Court of California and U.S. District Court (Kansas), Exhibit D-266.

These two factors--the magnitude and the timing of student withdrawals--take on added significance when juxtaposed against existing industry refund policies. The amount of obligation a student will have is dictated by these refund policies, and, as we have shown, these policies tend to fix substantial obligations on persons who withdraw early in the course.[104]

The nature and degree of this loss is readily discernible when one compares the refund policies described above with the strict pro rata policy recommended in the Commission's proposed Trade Regulation Rule. In general, industry refund policies share several overriding characteristics. First, industry refund policies allow schools to retain up to $100 for any student who passes through the typical cooling-off period but never begins classes.[105] The provision in the proposed Rule would limit this to $25 and only after the student had passed through the carefully structured affirmation period required by the Rule in order to allow the student to study the disclosures set out in the Rule.

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[102] The record shows that this is not an assumption that can be readily made. One former salesperson testified quite pointedly as to the schools' role in causing students to drop out:

> Some home study schools I have worked for in the past have built in drop-out lessons which means a particular lesson or group of lessons become hard. This is after the time that the contract becomes payable in full. The statement I have heard many times from the industry is 'We love the student who pays but does not complete.' This means they do not have to service a student and do not have to worry about job placement or no trouble.

Testimony of W. Kelly, former salesperson, Jetma Technical Institute, Tr. 3420.

This is not a surprising phenomenon given the fact that the school is free to arrange or rearrange its course structure in any fashion that suits its needs. This often leads to class schedules that require consumers to pay substantial amounts of monies while receiving a minimum amount of service. See testimony of R. Lewis, former instructor, Commercial Trades Institute, Tr. 7195-96.

[103] See Part I, Section VI-A supra.

[104] See Part I, Section VI-B supra.

[105] NHSC's refund policy sets a $50 limit in this category.

Second, industry refund policies use broad categorizations in calculating students' refunds. Refunds are generally gauged by quarters[106] so that students dropping out any time during the period have the same obligation. For example, a student attending a NHSC member school who drops out after one percent of a course has the same obligation as a student who completes 24 percent of a course. In the situation where a course costs $2,000, a student could pay $550 for mailing in only one of a hundred lessons ($500 for 25 percent of the tuition plus the $50 enrollment fee). Under the strict pro rata refund, a student's obligation would proceed class-by-class or lesson-by-lesson, and would not be calculated in broad categories. Thus, the same student would owe only $45 under the pro rata refund.

A final distinguishing element of industry refund policies is their uniform termination of students' refunds after 50 percent of the course. All industry-recommended refunds, other than CAC's, stop after half the course is completed, so that while a student who finished 49 percent of his course would generally receive a 50 percent refund (less the enrollment fee), a student who finished 50 percent of a course would receive nothing. Using the same example cited above, a student who completed 49 percent of the lessons would be obligated for $1,050 (50 percent of the tuition price plus the $50 enrollment fee) while a student who completed 51 percent of the lessons would have to pay the full $2,000. Again, the pro rata formula recommended in the proposed Rule provides greater relief for consumers because it applies throughout the course and does not adopt an arbitrary cut-off.[107]

When the general characteristics of these refund policies are superimposed on the drop-out statistics cited earlier,[108] the magnitude of consumer losses becomes apparent. The sheer quantity of the number of students who drop out generates large financial losses.[109]

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[106] CAC utilized categories of one month and two months in place of the more typical 25 percent and 50 percent completion stages of other industry refund policies.

[107] It should also be emphasized that refund policies that use graduated stages and which have absolute cut-off points (e.g., no refund after 50 percent of the course) create incentives for schools to arrange their courses in such a fashion that the student's largest obligation occurs when the least amount of service has been rendered. Under a strict pro rata policy this would be difficult, if not impossible. See footnote 102, supra.

[108] See Part I, Section VI-A, supra.

The timing of these withdrawals can also cause large financial obligations for students. For example, for the six home study schools described previously,[110] 33 percent of the dropouts never finished one-tenth of their course and 47 percent never finished two-tenths of their course.[111] Thus, approximately half of all enrollees in these schools dropped out during the first quarter of their courses and each of these enrollees--irrespective of the precise time of withdrawal--was obligated to pay 25 percent of the total tuition, plus a registration fee of up to $50. Since these schools had collective enrollments of over 400,000 students, it is estimated that almost 200,000 students paid for 25 percent of their tuition--at a cost of millions of dollars.

Financial losses to students do not exhaust the types of costs that are associated with prevailing refund policies. Refund policies also have costs to taxpayers through federal subsidies for vocational education.[112] Under the Federally Insured Student Loan Program (FISL), the U.S. Office of Education guarantees private loans made to students who attend proprietary and other schools. By the very nature of the loan program, the student is obligated to repay the full face value of the loan. Indeed, if he fails to repay the original lender, the federal government will act as the collection agent of last resort to recoup the value of the loan.[113]

The absence of adequate refunds leads to losses to taxpayers when students default on their FISL loans because the federal government is forced to reimburse the lender.[114] It is clear from the available evidence that many students default (and taxpayers pick up the initial tab) because their school has not given them an adequate refund with which to repay some portion of their debt. One study concluded that:

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[109] For example, the GAO's investigation of veterans who failed to complete home study courses showed that the veterans surveyed paid over $24 million to proprietary correspondence schools for uncompleted lessons. GAO Report to Congress, Most Veterans Not Completing Correspondence Courses, p. 11, Exhibit H-10.

[110] *See* Part I, Section VI-A(2), *supra*.

[111] Moreover, 12 percent of the initial enrollees never completed their first lesson but were responsible for a $50 fee under NHSC's refund policy.

[112] *See* Part I, Section VIII-C, *infra* for a complete description of these federal programs.

[113] *See* Part I, Section VIII-C, *infra* for a full discussion of the FISL Program and the federal government's role as an insurer of FISL loans.

[114] *See* Part I, Section VIII-C, *infra*. A default occurs when a
(Continued)

> Tuition refund policy appears to be a key link between high drop-out and high default rates. A borrower who drops out of school is contractually obligated to repay his entire loan within 9-12 months. Failing to obtain what he deems to be an adequate or timely refund of his tuition, he may be unable or unwilling to do so. Another type of borrower completes his course of study but then stops payments because he feels that he did not really learn anything or that he did not get a job he had been led to expect.[115]

HEW's own inquiries seem to have verified that the high default rates at some schools are attributable to the schools' failure to make adequate refunds and that the government must often fill the void left by the student's default.[116]

Belatedly, the Office of Education has realized that there is a correlation between the refund a student gets and the amount the federal government may ultimately have to pay. The Commissioner of Education has recommended to Congress that a pro rata refund be made a statutory prerequisite to participation in federal educational programs:

> [I]t appears that most student withdrawals and drop-outs occur in the first half of post-secondary education programs. Therefore, consistent with the obligation to protect the interest of all parties concerned--students,

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114 (Continued)

student with a FISL loan fails or refuses to repay the original lender as specified in the loan agreement and the lender transfers the paper to HEW, declares the student to be in "default", and requests reimbursement by HEW.

[115] Orlans, Private Accreditation and Public Eligibility, Brookings Institute and the National Academy of Public Administration Foundation (October 1974), p. 404, Exhibit D-21.

[116] See Status of Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program, USOE, HEW, Region IV (1975), Exhibit H-201; Visitation Report, LTV schools, HEW-AICS (undated), Exhibit B-77; Review of Files of Students at Marsh-Draughon School, HEW, Region IV (May 24, 1974), Exhibit H-192; audit report of Alverson-Draughon Business College, HEW, Region IV (December 31, 1974), Exhibit H-193.

> lenders, participating schools and the financial interest and liabilities of the Federal Government--it is necessary to establish a pro rata refund policy.[117]

In considering the costs imposed by existing refund policies, some attention must also be given to the veterans enrolled in proprietary schools under the veterans' benefits program.[118] Vocational training for veterans under Title 38 of the U.S. Code is paid for by a system which reimburses the veterans on a monthly basis (for residential schools) or on a lesson-by-lesson basis (for correspondence schools).[119] When a veteran drops out of a course, the reimbursement from the VA ceases.

However, a large number of veterans are not advised by either the school or the VA that their contractual obligation to the school is distinct from this reimbursement mechanism and that while the reimbursement ceases, the obligation to pay on the contract remains. As the General Accounting Office found, veterans attending home study schools were financially obligated to pay $24 million for unreimbursed lessons under their enrollment contracts.[120]

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[117] "Proposal for Additional Legislative Requirements Relative to the Determination and Termination of Institutional Eligibility for Funding Status," HEW/USOE (July 30, 1971), p. 2, Exhibit F-20, document 4. It should also be noted briefly at this point that a pro rata refund policy also brings benefits over and above financial savings. As USOE stated in its policy paper "Federal Tuition Refund Requirements":

> The tuition refund issue is of prime strategic importance to the Office if it is to protect both Federal and student interests. This is so because a student-oriented (as opposed to an institution oriented) tuition refund policy has the natural effect of compelling a school to be more judicious regarding its advertisement-recruitment-admissions activities and to exert more effort in attempting to retain students once they are enrolled. In essence, the imposition by USOE of an eligibility requirement to the effect that institutions participating in student assistance programs must apply a specified (student-oriented) tuition refund model to all students enrolled under these programs would significantly lessen current temptations which lead to unethical practices by schools and abuse of FISL and other funding programs.

AIE Staff Paper (August 30, 1973), document 8, Exhibit F-20.

[118] The program for VA reimbursement of veterans attending proprietary schools is described in detail in Part I, Section VIII-C(1), infra.

[119] Under 38 U.S.C. Section 1786, the VA will pay up to 90 percent of the total tuition for home study courses. The remaining 10 percent must be discharged by the veteran.

Furthermore, the refund policies set forth in Title 38 obscure another cost incurred by veterans not protected by a more favorble refund policy. As discussed previously, many veterans enrolling in proprietary schools use both their VA benefits and Federally Insured Student Loans (FISL) simultaneously.[121] Should the veteran cease studies before course completion, not only will the VA benefits be discontinued, but the individual may face the prospect of having to pay back the FISL loan in full.

A strict pro rata refund would assist the veteran in this situation, since the refund would be computed on a lesson-by-lesson or class-by-class basis. As such, the reimbursement from the VA would cover lessons taken by the veteran, while the pro rata refund would require no further obligation if and when the veteran withdraws. As the Veterans' Administration stated in its testimony before the Senate Committee on Veterans' Affairs:

> The pro rata refund provisions would act to protect the veteran against incurring large liability while allowing schools a reasonable fee for their educational services to students. Many veterans sign contracts for these programs, and upon initiating the training find for diverse reasons they are unable to complete the program. Since the Veterans' Administration education assistance is paid only on the basis

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[120] GAO Report to Congress, Most Veterans Not Completing Correspondence Courses, p. II-12, Exhibit H-10. The GAO found that 31 percent of all veteran drop-outs thought they would have no further obligation if they dropped out, and that many veterans were not aware that the school might have a refund policy or that they were entitled to a refund. This set of perceptions is not confined to veterans but is often shared by other vocational school consumers. See Orlans, Private Accreditation and Public Eligibility, Brookings Institute and the National Academy of Public Administration Foundation (October, 1974), p. 408, Exhibit D-21.

[121] See Part I, Section V-C(3) supra. Based on figures provided by the National Home Study Council, we estimate that as many as 142,000 veterans were enrolled in accredited home study schools using both VA benefits and FISL loans. See submission to accompany the testimony of J. Brown, President, NHSC, Exhibit L-131.

> of the lessons completed and serviced, the veteran is responsible under the terms of the contract and this has placed many veterans in debt.[122]

The Senate Committee on Veterans' Affairs agreed that some refund policy more equitable than those currently employed by the industry was necessary to prevent financial losses to veterans.[123]

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[122] Educational Benefits Available for Returning Vietnam Era Veterans, hearings before the Subcommittee on Readjustment, Education and Employment, Committee on Veterans' Affairs, Part I, p. 424, Exhibit A-14.

[123] Report of the Senate Committee on Veterans Affairs to Accompany S.2161, Report No. 92-988 (July 26, 1972), pp. 51-55, Exhibit B-4. Moreover, as with the FISL program, one must not overlook the financial losses incurred by the taxpayers when inequitable refund policies are imposed on veteran enrollees. The VA recently reported that for the period 1966-1974 it paid out more that $76 million to veterans where they had not completed their home study courses. Comparable figures for residential schools are not available. See Training by Correspondence Under the GI Bill, VA, Office of the Comptroller (June 1976), p. 16.

VII. Student Placement Success

A. Introduction

As the name implies, proprietary vocational schools are in the business of training students so they can get jobs. The schools sell their courses as a means of obtaining employment at good salaries, and students enroll for the same reason. Federal and state governments contribute, in one form or another, hundreds of millions of dollars to this end and students expend an even greater amount--all so that they can get a job.

Given the schools' job and earnings representations and the students' job motivations, an important question arises: do the students and government get their money's worth: that is, do students get jobs because of their training?

The record demonstrates the following facts:

1) the prospective student has no way of knowing whether the course being considered will enable him to get a job;

2) the school, despite its advertised claims, often does not know either;

3) in actuality, either because of the labor market, the quality of the course, the students' qualifications, or the adequacy of the schools' placement services, most graduates do not get a job related to the school's training or, if they do, not the job they expected. Moreover, because of the significant drop-out rate of most schools, only a fraction of initial enrollees, as opposed to graduates, get the job they expected to get when they signed up;[1]

4) while the overall employment picture is poor, some schools have excellent records while others have abysmal student placement rates;[2] and

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[1] Throughout this discussion one should bear in mind a critical fact often glossed over by representatives of the vocational school industry. A substantial majority of vocational school students never complete their course of study. Knowledge of the employment intentions and post-enrollment condition of drop-outs is limited and often conveniently ignored in discussions of schools' ability to find their students jobs.

[2] "Placement rate" is an often used and confused term. Several uses of the term are as follows:

a) Sometimes placement rate refers to the percentage of students the school places expressed as a ratio of the number of students the school itself places, to the number of students who request placement assistance from the school.

(Continued)

[2] (Continued)

This report will *not* adopt this use and will calculate placement rate as the ratio of graduates who get a job either through the school or on their own to the total number of graduates. (Similarly, the word "placed" will mean both placed by the school and by the student's own efforts, unless otherwise specified.)

b) It may be that the most valuable single piece of information is the placement rate expressed as the ratio of *enrollees* who get jobs to the *total number* of *enrollees*. *See* Part II, Section IV-C, *infra*. But for the sake of simplicity, placement rates here will refer to the percentage of *graduates* who get jobs.

c) Sometimes schools use a placement rate as the percentage of graduates "available for placement" who get jobs. "Available for placement" is not a precisely defined term but seems to mean those who have graduated and want jobs at the time they are questioned. This approach is questionable since students who see they will not get the job they hoped for with their present training and consequently enroll in another school, take another unrelated job or enlist in the military are "not available for placement" and thus do *not* lower the placement rate. Of course, the "available for placement" method also eliminates from the calculations others who are not looking for a job for reasons unrelated to their schooling--for example, bad health. Placement rate in this report will not include the "available for placement" factor unless otherwise specified.

d) Sometimes a placement rate includes everyone who got a job, whether that job was related or not. Even when only related jobs are counted, there are various interpretations of what "related" is. Is placement as a key punch operator related to a course in computer programming? In evaluating placement rates, strict attention should be paid to what are related jobs. Salary level is likely to be a good indicator of job relatedness.

e) Placement rate calculations also vary as to how soon after graduation the student is surveyed. A survey a year or two after graduation may find more students working in the field, but the utility of the course in helping the students get or maintain those jobs becomes more tenuous.

f) Placement rate calculations often do not consider whether the job, while related, was also the type of job at the salary level the student expected to get upon enrollment.

g) Similarly, placement rates often do not take into consideration whether the course helped in any way in getting the student the job which was obtained.

5) there are no practical problems hindering schools from compiling and disclosing placement rates so that prospective students can make an informed purchase decision.

B. Placement Information and the Prospective Enrollee

This Section will analyze consumers' knowledge of the placement rates of courses in which they are considering enrolling. As discussed earlier, prospective students rarely, if ever, know the placement rates for a course's previous graduating classes.[3] While what students are purchasing, in reality, is an opportunity to obtain a job, they have no way of assessing how great the opportunity is. Only a small minority of the hundreds of schools that have commented on the Rule have stated that they disclose such information.[4] Accrediting associations do not require such disclosure, and further, the counsel for three of the accrediting associations does not even consider the placement rate a material fact that would assist a prospective student in making an enrollment decision.[5] In fact, the private school accrediting associations have turned down proposals that would accurately and inexpensively generate and disseminate such information.[6] Moreover, these associations have no plans to assist schools in establishing standards as to how to meet new HEW regulations requiring a limited form of placement disclosures for schools utilizing Federally Insured Student Loans.[7]

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[3] See Part I, Sections III-G, IV-B, and V-B, supra.

[4] Several that do are Control Data, testimony of John F. Lynch, employee, Control Data Corporation, Tr. 7391; Bell & Howell Correspondence Schools, testimony of Brenda Maginity, salesperson for Bell & Howell Schools, Tr. 8941; and a few small residence schools that make public placement lists for their recent graduates. See testimony of Chick Litzo, representing the Divers Institute of Technology, Tr. 4863; testimony of Harold Wosepka, President, Longview Business College and member of the Council on Higher Education, Washington, Tr. 5087.

Even if a school does disclose some form of placement information, this may not be adequate to fully inform the consumer. For example, Control Data only discloses placement rates for graduates, and does not pass on any information about the number of students who graduate. Bell & Howell weaves its disclosures into a long narrative that becomes part of the school's sales literature. Schools that release lists of placed graduates often do not specify the age of the list, or whether jobs are related, the salary the graduates are earning, or whether the school's training was of assistance in getting a job.

[5] See, e.g., testimony of Bernard Ehrlich, Legal Counsel to NHSC, NATTS, and the Cosmetology Accrediting Commision, Tr. 9272.

The information concerning jobs and earnings that does make its way to consumers is often inaccurate--misleading or ambiguous claims passed on by the schools themselves as part of their advertising and sales efforts. This information ranges from government statistics about general demand for skilled workers in certain occupations (even though the *school's* graduates may not be getting such jobs), to false job guarantees, fabricated high placement rates, and anecdotal testimonials from a few satisfied students.[8]

The fact that potential enrollees rarely, if ever, get accurate placement rate disclosures, but often get misleading or deceptive advertising or sales claims, means that consumers cannot make rational marketplace decisions about whether to enroll in a particular course. Experts have testified to the serious distorting effect inaccurate information has on rational market choice.[9] The determination to purchase a vocational school course logically should rest almost entirely on a judgment whether that particular course will help the enrollee get a particular job; however, that judgment is a difficult one to make in a market glutted by misleading information. The difficulty is often exacerbated by the student's inexperience with the labor market[10] and lack of counseling.[11] Just as important, several labor market experts have commented on the complexity of the determination of what kind of job a person can get after vocational training. Much depends on the reputation of the school, the quality of the training, the students's own qualifications, the place and time one looks for a job, the manner in which the student looks, and other factors.[12]

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[6] *See, e.g.*, testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495; testimony of W. Griffith, Research Specialist for the Fairfax County Public Schools, Tr. 2642; testimony of D. Laramore, Supervisor of Vocational Guidance, Montgomery County Public Schools, Tr. 2960.

[7] *See, e.g.*, testimony of Bernard Ehrlich, Legal Counsel to NHSC and NATTS, Tr. 9272; testimony of William Goddard, Executive Director, National Association of Trade and Technical Schools, Tr. 9166; testimony of William A. Fowler, Executive Director, National Home Study Council, Tr. 9049; testimony of Richard A. Fulton, Executive Director and General Counsel of AICS., Tr. 8979. *See* discussion of FISL regulations at Part I, Section VIII-C(2), *infra*.

[8] For a full discussion of these claims, *see* Part I, Section IV-B(1) and (2), *supra*.

[9] *See* testimony of Ernest Stromsdorfer, Director of Evaluation, Department of Labor, Tr. 2456; testimony of Wellford W. Wilms, Center for Higher Education University of California, Tr. 3195; testimony of John Wich, Associate Professor of Marketing, University of Oregon, Tr. 4210; testimony of Harold Orlans, Senior Research Associate, National Academy of Public Administration Foundation, Tr. 2479; testimony of B. Gilchrist, Director of Computing Activities at Columbia University, Tr. 3002.

Because of the difficulty of this decision, guidance and occupational counselors,[13] HEW,[14] state governments,[15] the

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[10] See Part I, Section III, supra.

[11] See Part I, Section III-G and H, supra.

[12] See testimony of Ernest Stromsdorfer, Director of Evaluation, Department of Labor, Tr. 2456; testimony of John Wich, Associate Professor of Marketing, University of Oregon, Tr. 4210; testimony of George Seltzer, Labor Market Analyst and Economist, representing Control Data Corp., Tr. 8856; testimony of Wellford W. Wilms, Center for Higher Education, University of California, Tr. 3195.

[13] See materials from Dr. Kenneth B. Hoyt, Professor of Education, University of Maryland, Exhibit C-71; testimony of Howard Schofield, Massachusetts Schools Counselors Association, Tr. 507, 510; testimony of Dr. Benjamin Shimberg, Educational Testing Service of Princeton, New Jersey, Tr. 1083; testimony of Dr. Willard D. Griffith, research specialist, Fairfax County Public Schools, Tr. 2642; testimony of Darryl Laramore, Supervisor of Vocational Guidance, Montgomery County Schools, Maryland, Tr. 2960; testimony of Dallas Smith, American School Counselor Association, De Anze College, Tr. 4276; testimony of Robert G. Estell, adult career counselor, Regional Occupational Program Counseling Center, Tr. 5753; testimony of Gordon R. Kutscher, Executive Director, Missouri Advisory Council on Vocational Education, Tr. 6476; testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495; testimony of Gerald Belchick, Staff Development Coordinator for the State of California Department of Rehabilitation, Northern Region, Tr. 3781.

[14] "Federal, State and Private Programs of Low-Interest Loans to Students in Institutions of Higher Learning," 40 Fed. Reg. 7586 (February 20, 1975), amending 45 C.F.R. Part 117.66, see H-160. See discussion of new FISL regulations at Part I,
(Continued)

Federal Interagency Committee on Education,[16] congressional committees,[17] and numerous consumer groups,[18] among others, support the need for affirmative disclosure to prospective students of a course's placement rate.

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[14] (Continued)

Section VIII-C, *infra*. *See also* letter from P. Muirhead, Acting Commissioner of Education, to Senator E. Brooke (May 8, 1974), Exhibit H-84.

[15] A national conference sponsored by the Education Commission on the States recommended that each school be required to provide prospective students with a "full institutional disclosure", which includes placement disclosures. *See, e.g.*, *Consumer Protection in Postsecondary Education, Report of the Second National Conference (November 14-15*, 1974) by the Education Commission of the States (March 1975), Exhibit A-106. *See also* discussion of Illinois, Minnesota, other state laws, at Section VIII-B(1), *infra*.

[16] *A Federal Strategy Report for Protection of the Consumer Education*, FICE, Subcommittee on Consumer Protection (September 18, 1974), p. 52, Exhibit H-95, concluded that placement disclosure should be a prerequisite for participation in all federal aid programs.

[17] Reducing Abuses in Proprietary Vocational Education, Twenty Seventh Report, Committee on Government Operations, House Report No. 93-1649 (December 30, 1974), Exhibit H-168. *See also* the testimony of the authors of the Brookings Institute's Report on Private Accreditation and Institutional Eligibility before the Special Studies Subcommittee of the House Committee on Government Operations: H. Orlans, "The Protection of Students at Proprietary Vocational Schools", Exhibit H-90, document 4, and G. Arnstein, document 5, Exhibit H-90.

[18] *See* testimony of Sonja Soehnel, attorney, San Mateo Legal Aid, Redwood City, California, Tr. 3988; testimony of Bruce Berwald, attorney, San Mateo Legal Aid, Redwood City, California, Tr. 3972; testimony of Len Vincent, former investigator for Baton Rouge Consumer Protection, Tr. 4246; testimony of Patrick Filter, attorney, Contra Costa Legal Services Foundation, Richmond, California, Tr. 4261; testimony of Ken McEldowney, staff member of Consumer Action, Tr. 4671; testimony of Owen Butler, Acting Director, Orange County Office of Consumer Affairs, Tr. 5513; testimony of Celia Maloney, Illinois Consumer Advocate for the State of Illinois, Tr. 6413; testimony of Allan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7277; testimony of John C. Hendrickson, attorney to former Greer Technical Institute students, Tr. 8790; testimony of Joel R. Platt, Consumer Representative for students and prospective students, Tr. 8965; testimony of
(Continued)

C. School Knowledge of Placement Information

One of the reasons many schools do not disclose placement rates is because they do not know them. While numerous schools have been keeping placement rates in some form,[19] until recently schools which did not keep such statistics comprised a significant portion of the proprietary vocational and home study school universe.[20] This phenomenon was particularly marked since the large home study schools, which enroll a substantial number of all vocational school students, traditionally have not kept placement rates.[21] The advent of new Veterans' Administration requirements, HEW regulations, some new state laws and the F.T.C. proposed Trade Regulation Rule has encouraged or required more schools to maintain placement data.[22]

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[18] (Continued)

Richard Gross, Legal Services Attorney, Boston Legal Assistance Project, Tr. 32; testimony of Leonard L. Sanders, President, Better Business Bureau of Eastern Massachusetts, and President, Consumer Affairs Foundation, Tr. 227; testimony of Paul Gitlin, Executive Secretary, Massachusetts Consumer Council, Tr. 289; testimony of Hollis Young, Legal Services Attorney, Boston Legal Assistance Project, Tr. 364; testimony of Gary Yesser, staff attorney at Rhode Island Legal Services, Tr. 534; testimony of Elinor Guggenheimer, Commissioner of Consumer Affairs for New York City, Tr. 938; testimony of James Lack, Commissioner of Consumer Affairs, County of Suffolk, Tr. 992; testimony of Lester Goldblatt, Supervising Attorney, Civil Division of the Legal Aid Society of New York, Tr. 1183; testimony of Philip Gasell, formerly staff attorney, New York City Department of Consumers, Tr. 1345; testimony of Joanne Faulkner, attorney, New Haven Legal Assistance Association, Tr. 1379; testimony of Theresa H. Clark, Deputy Director, District of Columbia Office of Consumer Affairs, Tr. 2179; testimony of Ronald Chirlin, staff attorney for Ayuda, Inc., Tr. 2608.

[19] See text at notes 128-139, infra.

[20] See, e.g., Unaccredited Proprietary Vocational Schools' Responses to Information Request, Exhibit C-200; materials from file 742-3161, Job and Opportunity Advertiers Unnamed, Exhibit C-210.

[21] NHSC does not require such information, nor have they kept that information independently. See NHSC Accrediting Commission documents, Exhibit F-34; Self-Evaluation Reports and Chairman's Letters, NHSC, Exhibit F-64.

[22] New VA, FISL and some state regulations are now requiring schools to make some kind of follow-up efforts of their graduates. For a full discussion, see notes 131-137, infra.

(Continued)

In addition, many of the schools that utilized the most blatant job and earnings claims in advertising had only the vaguest knowledge of what happened to their students. For example, in 1974 the F.T.C. staff asked a number of vocational and home study schools, whose advertising contained some of the most direct job and earnings claims, to substantiate them.[23] The adequacy of such substantiation varied widely. Some schools backed up their job and earnings claims with lists of students who obtained related jobs, sometimes even including salaries and names of employers.[24] Most schools' basis for their job and earnings claims, however, was either non-existent or totally inadequate in demonstrating that a graduate of one of their courses would obtain the advertised job or salary.

Some schools admitted that they kept no records at all to support their claims.[25] A number of schools used a few testimonial letters, often several years old, as substantiation.[26] Another often-used form of support was abstract reasoning.[27]

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[22] (Continued)

Other schools have begun for the first time reporting follow-up surveys at the hearings for this Rule. See McGraw-Hill Comment, Exhibit K-900; attachment to testimony of Gerald Allen, Exhibit L-119; Bell & Howell Comment, Exhibit K-856; attachment to testimony of Robert Barton, Exhibit L-112.

[23] See, e.g., materials from File 742 3161, Job and Opportunity Advertisers Unnamed, Exhibit C-210.

[24] ACR Training School, Atlanta School of Interior Design, Aversuald Business University, Bell Rea Institute of Animal Technology, Charron Williams College, Fashion Institute of America, H & R Block Tax Training Institute, ITT Peterson School of Technical Electronics, Spartan School of Aeronautics, Teller Training Institute, Temple School, op. cit., Exhibit C-210.

[25] Anderson School for Scientific Massage, Automation Academy, Benson Barreft, Inc., Glensones School of Fashion, Jefferson Tax Institutes, John Robert Powers, Medical Hospital Insurance Institute, National School of Conservation, Patricia Stevens Career Institute, Universal Schools, op. cit., Exhibit C-210.

[26] Belsaw Institute, Chicago School of Watchmaking, Chicago Technical College, Explosives Training Institute, Floral Arts Center, Institute of Applied Science, Modern Schools International, National Technical Schools, United Career Schools, Universal Detectives, op. cit., Exhibit C-210.

[27] Art Upholstery Institute, Fabricon Modern Upholstery Institute, Fabracraft, Federated Tax Home Training Services, Hallmark Institute, Modern Upholstery Institute, op. cit., Exhibit C-210.

For example, Federated Tax Home Training School backed up its claim that its students can make from $1,000 to $3,000 in three months with the following argument: H & R Block charges an average of $13.33 a customer. The average tax preparer can do three returns in an evening, and the school has no reason to doubt that its students are any less competent than the average preparer. The school then calculates a six-day week for fourteen weeks, adds working extra on Saturdays and Sundays, and concludes that its graduates will earn $3,000. Of course, Federated has no knowledge whether any of its graduates can get customers so easily. Its other basis for claiming that its graduates can make $3,000 from a part-time job is that their competitors use the same advertising claims.

Still other schools substantiate claims that their students will obtain jobs and reach certain earnings with references to the *Occupational Outlook Handbook* or other labor market forecasts.[28] Some of the forecasts the schools rely on are of doubtful validity.[29] For example, a school offering a postal exam course relied on Office of Management and Budget estimates of increased federal hiring, failing to notice that postal employees were being cut back. Even if valid, labor market forecasts are not accurate predictors of an individual's chances of getting a job upon graduating from a particular course at a particular school at a given point in time.[30]

Other schools, in substantiating their claims, refer to approval of the course by state agencies or the Veterans Administration.[31] But the state and VA approval agencies have commented that approved status is not a determination that graduates will obtain employment in the advertised jobs or at advertised salaries.[32] Another form of substantiation is solely to link a course with a particular occupational objective, without any evidence that graduation will lead to that objective.[33]

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[28] CTA Truck Driver School, General Training Service, Intext, NRI, National Technical Institute, Sylvania Technical School, *op. cit.*, Exhibit C-210.

[29] In addition, the forecasts themselves offer no evidence that students of a particular school will obtain employment in those occupations with openings. *See* the discussion in Part I, Section IV-B(2), *supra* and Part II, Section IV-B, *infra*.

[30] *See* discussion at Part I, Section IV-B(2), *supra* and Part II, Section IV-B, *infra*.

[31] *See* General Training Service, Job and Opportunity Advertisers Unnamed, Exhibit C-210.

[32] General Training Service, Grantham School of Engineering, National School of Conservation, Universal Detectives, *op. cit.*, Exhibit C-210.

The result is that many schools which do not advertise jobs and earnings may have a high placement rate, but the schools that do advertise often do not even know what their rates are. In effect, the market has failed, and the schools producing the best product are not necessarily getting that point across. Instead, schools that may have the worst performance are doing the advertising that implies that their courses are the way to get a high-paying job. This point has been amplified by a number of commentators who have described how the market is not operating in this industry and why it is impossible for even a diligent and intelligent consumer to segregate accurate information from data that is inaccurate, false, or unsubstantiated.[34]

D. Ability of Students to Obtain Employment

1. Industry-Wide Placement Rates

Since many schools do not report or know their placement rates, it is difficult to calculate industry-wide placement rates; however, several studies have sampled graduates from schools representing different areas of the country and offering different types of programs. The results form a consistent pattern, and offer an insight into industry-wide placement patterns. Note that all of these studies sampled graduates only, and the placement percentages would be substantially lowered if all enrollees were included in the calculations.

The most important recent study is one funded by the National Institute of Education and conducted at the University of California at Berkeley's Center for Research and Development in Higher Education by Wellford Wilms.[35] An analysis of its results finds that only 17 percent of accounting graduates obtained full-time jobs in accounting or related jobs;[36] 17 percent of computer programming graduates obtained full-time jobs in programming

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[33] General Training Service, National School of Conservation, Universal Detectives, op. cit., Exhibit C-210.

[34] See text at notes 9-12, supra.

[35] "The Effectiveness of Public and Proprietary Occupational Training", Wellford W. Wilms, Center for Research and Development in Higher Education, University of California, Berkeley (October 31, 1974), Exhibit C-110. This 1974 study surveyed a random sample of graduates from 29 proprietary and 21 public residence vocational schools in four large metropolitan areas. Students were selected from six occupational programs: accounting, computer programming, dental assisting, electronic technician, secretarial, and cosmetology. Follow-up information was obtained for 85 percent of the graduates sampled.

[36] Calculations based on information found at id., pp. 70, 74. But note that because of some confusion in reporting of data, this percentage could conceivably be as high as 19 percent (Continued)

or related jobs;[37] 19 percent of electronic technician graduates obtained jobs as electronic technicians or in related jobs;[38] 69 percent of dental assistant graduates obtained jobs as dental assistants;[39] 60 percent of secretarial graduates obtained secretarial jobs;[40] and 61 percent of cosmetology graduates became cosmetologists.[41] The study's results thus fall into a fairly neat pattern. For more sophisticated and technical courses, less than 20 percent of the graduates received related employment; for other less sophisticated courses, about 60 percent of the graduates obtained related jobs.[42]

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[36] (Continued)

because the study excluded three female accountants, but did not explain whether they were proprietary or public school graduates.

Since the study's primary objective was to compare public with private schools, its tables sometimes require additional calculations to obtain placement rates for proprietary schools. All future citations will assume that the cited statistics may be recalculations of Wilm's basic data.

[37] *Id.* at 98, 101.

[38] *Id.* at 114, 118.

[39] *Id.* at 127, 129.

[40] *Id.* at 142, 145.

[41] *Id.* at 158, 161.

[42] It must be remembered that these results are based on the researchers' determination of whether a job is related or not. For example, about half the accounting graduates become clerks, leaving about a third with totally unrelated jobs or unemployed. Similarly, while only 17 percent of the programming graduates became programmers or got other related jobs, 44 percent got jobs as clerks, keypunch operators, computer operators or bookeepers. Thirty-nine percent got no jobs, or totally unrelated jobs. Also note criticisms of Wilms' study at Exhibit C-168, John E. Tirrell "Comments on 'The Effectiveness of Public and Proprietary Occupational Training' by Wellford Wilms" (Exhibit C-210), American Association of Community and Junior Colleges, Washington, D.C. *But see* Exhibit C-212, "Response to 'A Brief Review of the Wilms Study'" (Exhibit C-169), by Wellford Wilms, January 1975. Staff does not feel these criticisms lessen the primary conclusion drawn in Wilms' study--that placement rates are generally low.

Moreover, while a majority of graduates of the less sophisticated courses obtained related jobs, their salaries were low, lower in fact than comparable public school graduates. In addition, they tended to leave their related job and look for a better one. For example, dental assistants averaged $77 a week, and 45 percent soon changed jobs to an unrelated field.[43] About half said they would not have gone to the same school if they could do it over again.[44]

Thus, Wilms found that under 20 percent of graduates from proprietary schools who enrolled in the professional or technical level training ever got those jobs. The remainder became clerks, took lower paying, unrelated jobs, or were unemployed. While those who graduated from less technical, clerical or service worker type programs had a good chance to get related jobs, these jobs, with the exception of secretarial positions, barely earned the federal minimum wage.[45] Wilms concluded that proprietary school courses did not provide an avenue for employment opportunity or career advancement. Further, he determined that such courses succeeded in freezing students into their existing social and economic level:

> ...this latest evolution in postsecondary education that has recently been extended to the least advantaged population in the system maintains class and income inequalities rather than overcomes them.[46]

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[43] "Wilms", note 35 supra at pp. 131, 132. Secretaries averaged $103 week, and tended to remain as secretaries. Id. at pp. 147, 148. Cosmetologists averaged $55 a week and virtually all changed jobs, but most remained in the same field. Id. at pp. 162, 163.

[44] Id. at p. 136. Seventy-five percent of secretaries and cosmetologists would do it over again at the same school. Id. at pp. 152, 167.

[45] See id. at p. ii.

[46] Id. at p. iii. Representatives of the private vocational school industry take solace from Wilms' finding that public vocational schools performed almost as poorly. We fail to appreciate how a study that condemns the performance of both sectors provides grounds for ignoring the fundamental fact that proprietary school students do not get what they were promised and what they paid for--employment.

An earlier but parallel study by the American Institute for Research in the Behavioral Sciences (AIR) obtained similar results.[47] The researchers found that 54 percent obtained full-time related jobs after training. This ranged from 39 percent in the computer area to 62 percent in the health field.[48] These somewhat higher percentages can be explained by the much looser interpretation of a related job applied by the AIR researchers.[49]

A number of other studies on the public record, while all having some form of bias or methodological weakness, taken as a whole in conjunction with the Wilms and AIR studies, demonstrates an overall tendency for low placement rates for the proprietary school industry. Fewer than half of the graduates get related jobs--which of course means only a fraction of enrollees get what they paid for, since most enrollees never graduate.[50]

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[47] "A Comparative Study of Proprietary and Non-Proprietary Vocational Training Programs," American Institutes for Research in the Behavioral Sciences, Palo Alto, California (November 1972), Exhibit A-3. In 1972, AIR sampled residence schools in several major metropolitan areas throughout the country.

[48] Id., p. Q-2.

[49] This study differed from the Wilms' study in that the student was permitted to describe whether a job was related. Thus, while Wilms would not consider a computer operator related to a job as a computer programmer, AIR's procedure produces this result.

[50] One study of graduates of two-year proprietary business colleges found a low placement rate. Twenty percent said their job was the same as their studies, and another 20 percent said it was highly related. The remainder said their job was slightly or wholly unrelated. Apparently, these statistics did not include those unemployed and should thus show an even lower rate. Robert E. Allen and Thomas G. Gutteridge, "The Career Profiles of Business Majors from Two-Year Public and Proprietary Colleges." Another study surveyed graduates of Pennsylvania proprietary vocational schools that granted associate degrees--hardly typical of most vocational schools. But even these degree-granting schools had an average placement rate of 49 percent for the years 1972 through 1974, Exhibit L-124(9), (10), (11).

Another source of national data on proprietary vocational school placement performance is found through studies of MDTA programs. One study found that 28 percent of private school MDTA graduates from a 12-state survey were placed in training-related jobs. This compares with 40 percent for public school MDTA graduates. "Evaluation of the MDTA Institutional Individual Referral Program," Olympus Research Corporation, Salt Lake City, Utah (June 1972), Exhibit C-52.

(Continued)

While industry-wide studies of correspondence students are rare,[51] the available evidence points, as one would expect, to the fact that home study school placement rates are even lower than those of residence schools.[52] When this is added to the fact that

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[50] (Continued)

One other study is so fraught with methodological problems that it is virtually meaningless. It surveyed only 120 business and trade technical graduates of Indiana accredited proprietary schools. The researcher found that 66 percent of the graduates found jobs in the same or a highly related field, but the sample size and response rate make this survey of questionable accuracy. Note also that only 56 percent were very satisfied with their first job. Sheryl Bond, "Postsecondary Education in Accredited Private Vocational Schools", Doctoral Thesis, School of Education, Indiana University (August 1974), Exhibit C-167.

In fact, the State of Indiana reported that out-of-state schools placed only 14 percent of their graduates. However, several schools stated they did not "place" students but students could get jobs on their own. "1974 Accreditation Renewals," by Marian Cline, Staff Specialist for Licensing Procedures, Indiana Private School Accrediting Commission, Exhibit C-232.

[51] The above cited studies only sampled residence school students.

[52] A recent study of veterans utilizing their educational entitlement to various types of training found that 23.4 percent of veterans who graduated from correspondence schools are in the same type job they were trained for, as opposed to 42.8 percent in vocational/technical programs and 56.2 percent in flight schools. While 29.7 percent of the correspondence school graduates reported substantial use of their course in their jobs, 46.9 percent are either not working or are in unrelated jobs, as opposed to 35.9 percent for vocational-technical programs. Veterans Response to GAO Questionnaires on the Operation and Effect of VA Education Assistance Programs Under 38 USC 1651 et seq., GAO Report (August 11, 1976) p. 12. Note that these figures are only for veterans, who, being older and more trained, are more likely to obtain related employment. They also do not distinguish between those already employed in the field before training and those who got entry-level jobs as a result of the school's course.

What it does show is that correspondence school graduates do not do as well as vocational-technical graduates in finding related employment. Note that 47.1 percent of vocational-technical graduates, but only 30.7 percent of correspondence graduates, found their courses extremely useful. Id. p. 16.

(Continued)

drop-out rates at correspondence schools are higher than residence schools, one could expect that fewer than 10 percent of those who enroll in a home study course get the jobs they enrolled to get.

These generally low placement rates parallel the numerous complaints on this subject that are on the public record from consumers, consumer groups, legal aid attorneys, and other sources.[53]

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[52] (Continued)

Another study of veterans enrolled in correspondence courses found that 45 percent of graduates who went out and looked for related jobs found such jobs. Even this percentage is inflated. It does not take into account those who enrolled to get a job, but gave up and did not look. The sample was also only of veterans, who are older, more educated, and have more work experience than the average enrollee. See Part I, Section III, supra. There is also no measure of whether the jobs the veterans are getting are the ones they expected to get and there is no showing that the course helped in finding such employment. For example, the drop-outs who looked for jobs did better than those who completed the course (59 percent to 45 percent). "Summary of Responses to Questionnaire Sent to Veterans and Servicemen Who Had Received Educational Assistance from the Veterans' Administration for Enrollment in Correspondence Courses as of June 30, 1970"; Questionnaire Instruments, "Recap of Data Extracted from VA Records on Veterans and Servicemen Enrolled in Correspondence from June 1966 through June 1970," Exhibit C-43.

See also discussion at note 66 infra of low placement rates for several major correspondence schools.

[53] See notes 93, 109 infra and testimony of Bob Borden, student, Electronic Computer Programming Institute, Tr. 3455; testimony of Anita Carter, former student, Heald Business College, Tr. 3485; testimony of Sally Keaton, former student, Bryman School, Tr. 3578; testimony of Patricia Kerwin, former student, Bryman School, Tr. 3865; testimony of Saul Katzowitz, former student, Control Data, Tr. 3880; testimony of Jean Gerald, former student, Bay City College, Tr. 3954; testimony of Bruce Berwald, attorney, San Mateo Legal Aid, Redwood City, California, Tr. 3972; testimony of Sonja Soehnel, Attorney, San Mateo Legal Aid, Redwood City, California, Tr. 3988; testimony of Len Vicent, former investigator for Baton Rouge Consumer Protection, Tr. 4246; testimony of Patrick Filter, attorney, Contra Costa Legal Services Foundation, Richmond, California, Tr. 4261; testimony of Gary Burnson, former student, Control Data, Tr. 4398; testimony of Karen Tomovick, representing Consumer Action, San Francisco, Tr. 4575; testimony of Alan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7277; testimony of Bruce A. Graig, Assistant Attorney General, State of Wisconsin,

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2. Variations in Placement Rates

Just as marked as the overall low proprietary school placement rates are the variations within the industry as to placement success. Graduates of certain types of occupational programs fare far better than others. For example, the proprietary school student whose career goal is to be a computer programmer,[54] fashion model,[55] or a park ranger,[56] has a much lower probability of fulfilling that goal than those enrolled in cosmetology[57] or secretarial[58] courses. The placement rate even at the same school can vary significantly from course to course. For example, Control Data, a large chain of NATTS accredited residence schools, reported placement rates ranging from 25 percent to 95 percent for various courses from just two

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[53] (Continued)

Department of Justice, Tr. 7051; testimony of Dorie Sternberg, representative for Wind Radio Call for Action, Tr. 7156; testimony of Patricia Thompson, student, Allied Institute, Tr. 7238; testimony of Jan Vogel, Supervisory Collection Officer, representing the Department of HEW, Tr. 7758; testimony of Lewis Winarsky, Assistant Attorney General, Office of the Attorney General, State of Ohio, Tr. 8540; testimony of John C. Hendrickson, attorney to former Greer Technical Institute students, Tr. 8790; testimony of Arnold R. Epstein, Special Investigator, Consumer Protection Division, Attorney General's Office, Massachusetts, Tr. 167; testimony of Leonard L. Sanders, President, Better Business Bureau of Eastern Massachusetts, President, Consumer Affairs Foundation, Tr. 227; testimony of Gary Yesser, former staff attorney at Rhode Island Legal Services in Providence, Consumer Affairs Division, Tr. 534; testimony of Lester Goldblatt, Supervising Attorney with the Civil Division of the Legal Aid Society of New York, Tr. 1193; testimony of Philip Gasell, former staff attorney with the New York City Department of Consumers, Tr. 1379; testimony of Donald P. Rothschild, Professor, George Washington University Law School, supervisor of Consumer H-E-L-P, Tr. 2130; testimony of Ronald Chirlin, staff attorney for Ayuda, Inc., Tr. 2608; testimony of Lorenzo Moody, former student of American Training Services, Tr. 2950.

[54] See text at note 37 supra, and notes 75 and 76 infra.

[55] See text at note 90 infra.

[56] See text at note 89 infra.

[57] See text at note 41 supra.

[58] See discussion at note 40 supra.

Control Data Schools.[59] Other studies attest to the fact that one's chances of getting a job are very much better taking a proprietary school course in some fields than in others.[60]

This wide variation in placement rates is even more marked when one compares individual schools. Some schools have submitted documents now on the public record supporting extremely high placement rates,[61] and others have also claimed (but without such substantiation) to have high placement success.[62] On the other hand, the placement rate at other schools is dismal--as shown by government audits and surveys,[63] comments by consumers and

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[59] Control Data submitted the placement disclosures it makes to prospective enrollees, including the placement rates for particular graduating classes in 1975 for courses from two schools. Rates range from 25 percent to 95 percent depending on the course. Programming technology had the low rate; digital computer operator the high rate. *See* attachment to testimony of John Lynch, Control Data Corp., Exhibit L-101.

[60] Educational Systems Research Institute surveyed 2,112 graduates of the class of 1974 for 38 proprietary schools offering associate degrees in Pennsylvania. (Note that placement rates at schools offering associate degrees should not be typical of other non-degree granting schools.) The results show variations from program area to program area. For example, 48.3 percent of respondents in health occupation programs were employed in the field. The figure for business education, 48.5 percent, is similar; but for distributive education (apparel, general merchandise, marketing technology, sales) the placement rate dips to 31.5 percent. Technical occupations show a 67 percent placement rate. Exhibits to testimony of M.V. Eninger, President, Educational Systems Research Institute, Exhibit L-124(11).

See also "Wilms", note 35 *supra*; AIR, note 47 *supra*.

[61] Placement record from Professional Business Institute (1972), Minnesota, Exhibit C-21; Professional Business Institute (PBI) newsletter and catalog, list of graduates and placement information newsletter, Exhibit C-35; materials from File 742-316, Job and Opportunity Advertisers Unnamed, Exhibit C-210; placement record for 1972 and 1973, Charron Williams College, Miami, Florida, Exhibit C-230.

[62] *See e.g.*, Unaccredited Proprietary Vocational Schools Responses to Information Request, Exhibit C-200; and, Compliance Report of Proprietary Institutions Apprenticeship Programs, and On the Job Training Programs, VA Form 09-4274, Exhibit C-245.

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[63] In 1974, auditors from the Office of Education reviewed the files of students listed as graduates of the Marsh Draughon School, one of the large chain of schools once owned by LTV and accredited by AICS. In addition to finding that students listed as graduates did not, in fact, graduate, and a number of other discrepancies in record-keeping, a preliminary survey of placement success found students not being helped by the school in getting jobs, not being able to find them on their own, and, in fact, having to enroll in another school with a similar program in order to get the proper training. See, e.g., statement of Jay Thoreson, former student of Truckmasters, Exhibit C-192.

Another group of HEW auditors reviewed a number of Florida proprietary schools participating in the GSLP, and thus accredited by either AICS or NATTS. The investigation was triggered by high default activity and complaint letters from students. The task force found a pattern of numerous abuses, some of which include inadequate counseling, indiscriminate admission policies and consistent failure to determine prospect's ability to benefit from a course of study, and low placement rates.

At the Massey Business College, an AICS school, few graduates were able to locate employers who recognized Massey training as a qualifying factor for related jobs. At Massey Technical Institute, a NATTS school, the task force found career placement for graduates questionable. Only one school, the Charron Williams College, a NATTS school, was commended for an effective procedure of career job placement. The audit report cited a need to upgrade placement services for graduating students. "Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program," Office of Education, HEW, Region IV, Atlanta, Georgia (April 1975), pp.2-3, Exhibit H-201.

In 1974, the staff surveyed graduates, students, and drop-outs of Advance Schools (ASI), an accredited home study school enrolling almost 100,000 new students a year. Names were randomly selected from a list of students supplied by the school. Of the 70 responses, only one indicated the training helped in obtaining a job; nine did not answer the question; and half of the respondents were still actively enrolled or had dropped out. Selected material from F.T.C. File 742-3111, Advance Schools, Inc., Exhibit C-55.

See also questionnaires completed by Weaver Airline Personnel School Students for F.T.C. Kansas City R.O., Case No. 722-3149, Exhibit D-104; placement information distributed to students of Weaver Airline Personnel School (722-3149, Dk 3 0004), Exhibit C-74; F.T.C. Complaint and Decision and Order in

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63 (Continued)

the Matter of James Sharp, individually and as a former officer of Consolidated Sysems, Inc., Docket No. C-2112, Exhibit D-112; F.T.C. Complaint in the Matter of Lear Siegler, Inc., Docket No. 8953, Exhibit D-113; F.T.C. Complaint and Decision and Order in the Matter of Career Academy, Inc., Docket No. C-2546, Exhibit D-114; F.T.C. Decision and Order in the Matter of Consolidated Systems, Inc., and Allen Driscoll, individually and as an Officer of said Corporation, and Tom Johnson, and J.C. Triplett, individually and as former officers of said corporation, Docket No. 8867, Exhibit D-115; F.T.C. Complaint in the Matter of Control Data Corporation and Automation Institute of America, Inc., Docket No. 8940, Exhibit D-116; F.T.C. Complaint and Decision and Order in the Matter of Key Learning Systems Inc., Key Training Services Inc., Automobile-Household-Education Credit and Finance Corporation, and George Lawson, J. Wyman, Ralph and Theodosia W. LaBarbera, individually and as officers of said corporation, Docket No. 8963, Exhibit D-117; F.T.C. Complaint in the matter of LaFayette United Corporation, LaFayette Motivation Media, Inc., and Stuart Bandman, individually and as an officer and principal stockholder of LaFayette United Corporation, Docket No. 8963, Exhibit D-118; F.T.C. Complaint in the Matter of Maralco Enterprises, Inc., New York School of Computer Technology, Inc., Education Beneficial, Inc., Tuition Payments, Inc., Hyman Marcus, Bartholomew Colangeli, and Fred Rosenberg, individually and as officers of said Corporation, Exhibit D-119; F.T.C. Complaint in the Matter of Nationwide Heavy Equipment Training Service, Inc., and Raymond E. Phillips and James M. Pennington, individually and as officers of said corporation, Exhibit D-120; F.T.C. Complaint in the Matter of Diesel Truck Driver Training School, Inc., Robert L. Klabacka, and Raymond J. Watt, individually and as officers corporation, Exhibit D-121; F.T.C. Complaint in the Matter of World wide Systems, Inc., and Steven L. Bradshaw, individually and as an officer of said corporation, and d/b/a/ Associated Systems, and d/b/a Great Lakes Development Corporation and d/b/a Coastway American Systems, and d/b/a Atlas Systems and d/b/a New Horizens Unlimited and others, Exhibit D-122; F.T.C. Complaint in the Matter of Commercial Programming Unlimited, Inc., and Walter Small, individually and as an officer of said corporation, Exhibit D-123; F.T.C. Complaint in the Matter of United Systems, Inc., Skyline Deliveries, Inc., Truck Line Distribution Systems, Inc., Sheridan Truck Lines, Inc., and Advance Systems, Inc., and George Eyler individually and as an officer of said corporation, Docket No. C-2271, Exhibit D-124; F.T.C. Complaint in the Matter of Electronic Computer Programming Institute, Inc., Chestkin Computer Corporation, York Mountain Computer Corporation, Data Processing Resources, Inc., and Electronic Computer Programming Institute of Fresno, Inc., Docket No. 8952, Exhibit D-125; F.T.C. Complaint in the Matter of Tri-State Driver Training, Inc., and Robert L. Wise and Robert J. Kuhn, individually and as officers of said corporation, Exhibit D-126.

consumer representatives,[64] independent surveys,[65] and the schools themselves.[66]

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[64] See, e.g., Testimony of M. Capabianco, graduate, ITT, Tr. 81; testimony of P. Kerwin, former student, Bryman Schools, Tr. 3865; testimony of S. Katzowitz, former student, Control Data, Tr. 3880; testimony of M.J. Long, former student, ECPI, Tr. 4418; testimony of J. Dettles, former student, United Systems, Tr. 4625; testimony of K. Thrasher, former student, ECPI, Tr. 4647.

[65] In one such survey of degree-granting institutions, wide variations were found between schools even though one would expect generally high rates for degree-granting schools. The top six schools had placement rates of 100 percent, 100 percent, 90 percent, 76 percent, 75 percent and 75 percent. The bottom six had rates of 34 percent, 39 percent, 40 percent, 40 percent, 42 percent, and 43 percent. See exhibits to the testimony of M.V. Eninger, President, Educational Systems Research Institute, Class of 1974 Follow-up Survey, Individual School Report for Post-Secondary Level Programs, Exhibit L-124 (11).

[66] Schools have responded to accrediting and government agency requests for placement information with statistics that show wide variations in schools' abilities to create a program that will lead to their graduates obtaining related employment.

Schools have reported to NATTS placement rates ranging from 100 percent down into the 30 percent range. See NATTS, accrediting material from most recent Annual Report submitted by member schools, Exhibit B-30.

The VA has requested schools to provide placement rates in conjunction with an equal opportunity program. School reports vary from virtually complete placement to zero percent placement. See Compliance Report of Proprietary Institutions Apprenticeship Programs, and On-the-Job Training Programs, VA Form 09-4274 (Los Angeles, Chicago, and New York), Exhibit C-245.

Some placement rates reported to the State of Indiana are extremely low. Even ignoring those schools which claim they do not place students, some schools have virtually no success in placing students. One school reported 56 graduates placed out of 1,162. Others report placement rates in the 25 percent range. See Marian Cline, Staff Specialist for Licensing Procedures, Indiana Private School Accrediting Commission, "1974 Accreditation Renewals," Exhibit C-232.

The VA also now requires schools participating in the veterans' benefits program to show that 50 percent of a sample of graduates available for placement are in related jobs, otherwise the school loses its VA approval. While it is not surprising

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that schools whose surveys result in less than a 50 percent rate do not report them to the VA, these surveys show interesting variations.

For example, LaSalle submitted survey results to the VA showing percentages varying from 50.6 percent to 93 percent (LaSalle Exhibit Schedule D). Even more interesting is the fact that those percentages included those already in the field before they took the course. Thus an accountant who takes an accounting course, but receives no benefit, is still counted as a placement. One can reconstruct this survey and try to put it into perspective. Another LaSalle survey found that 38 percent of graduates took the course to get a new job and 25 percent to improve their present job. See exhibit to statement of Robert Barton and Frederick Greenman, LaSalle Extension University, Chicago, Illinois, Schedule C, Exhibit L-112. If one assumes this ratio holds fairly constant from course to course, the 50.6 percent and 93 percent would yield results that 30 percent of the graduates of one course and 60 percent of the other who wanted a new job and said they were available for placement got one.

This reconstruction of the data is supported by another LaSalle survey which shows that the average rate of those who graduated and went out and looked for a job in their field of study and got one for all of LaSalle's courses was 44 percent. Id., Schedule C. Moreover, all of these LaSalle figures are inflated because of the loose definition of "related job", high non-response rates, and the use of the available for placement concept.

But the bottom line of all of these statistics is that the placement rate for at least some of LaSalle's courses is low, probably significantly lower than the average of 44 percent. Bell & Howell surveyed graduates of its home-study courses from 1969 to 1974 and found that 29 percent of those who actively attempted to get a job got one in a field related to their training within three months of graduation. Another eight percent had gotten a job within a half-year. Of course, these figures do not answer whether the jobs graduates get are the type they expected to get when they enrolled, or only that they are getting jobs somewhere in the field. B & H Comment, item 3, p. 43, 45. Letter from Raymond C. Clevenger, Washington, D.C. (November 21, 1975), Exhibit K-856.

These results are really not that surprising when one considers the size, diversity, and ease of entry into the proprietary vocational school field. While on the average, a graduate's chances of getting the job for which he had enrolled are not good, enrollment in the right course at the right school substantially increases that probability. If, on the other hand, the graduate had selected the wrong course or school, the chances could be very slight.

As it now stands, the prospective enrollee really has no way of knowing which is which. While wide fluctuations in placement success make the cost of an erroneous decision high, in the current market, prospective enrollees rarely make informed choices. While one would expect a free market to provide such information to assist such a critical decision, that mechanism has apparently broken down in this industry.

E. Reasons for Inability to Obtain Employment

There are a number of reasons for the overall poor placement record by proprietary vocational schools and for the wide variaties among schools and courses. This Section will deal with three such factors:

(1) There is not a demand for graduates of vocational schools--particularly to fill many very technical, skilled, or unionized positions.

(2) Even where there is a demand, the training or advertised placement services of many schools are inadequate.

(3) Even where there is a demand, and the training and placement services are adequate, schools enroll students who are unqualified to fill such positions.

1. Employer Demand for Proprietary Vocational School Students

One reason for the low placement rates is that employers do not want to hire proprietary vocational school graduates, but prefer to employ those with more extensive education or work background.

One of the most comprehensive examinations of employers' hiring policies in relation to proprietary schools was done in 1974 by the State of Massachusetts.[67] The state surveyed employers and employment agencies concerning their experience with 35 local schools. None of the employers responding had ever employed an individual from eleven of the schools; none of the employment agencies responding had ever placed an individual from 27 of the schools; and no school had its graduates placed by more than three agencies. The report concludes:

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[67] The state surveyed 250 random employers and 50 random employment agencies in the Boston area regarding their experience with trade schools in general and with 35 local schools in particular. The surveys included nine career fields: (Continued)

> The results also indicate that technical training is not a passport to a lucrative profession. Many of the responding employers have stated a preference for a minimum of high school graduate. Others have indicated that college level training may be a necessary adjunct to technical proficiency.
>
> In addition to technical training a number of the employers surveyed have stated a preference for the employee with experience. Certain responses indicated that the level of training obtained from technical schools was insufficient for the particular employer's operation... . Different employers have mentioned a need for further training through industry schools, or on the job training....
>
> Training in a trade or technical school is not essential to gain employment in a particular technical occupation. Many of the comments stated that on-the-job training was a valuable source of knowledge. Others pointed out the availability of industry run schools which offer technical training or union apprenticeship programs.[68]

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[67] (Continued)

Appliance Repair, Air Conditioning, Refrigeration, Broadcasting, Data Processing, Detective Investigative, Electronic Technician Training, Hotel Motel Training, Medical Technicians, Tractor Trailer Training. While the response rate among employers and employment agencies was low, the results are still convincing. "Report of a Study Conducted by the Executive Office of Consumer Affairs on Placement and Employment Aspects of Private Trade and Technical Schools," Draft Copy, Edward J. Quinlan, Director, Consumer Complaints Division, Massachusetts Executive Office of Consumer Affairs (November, 1974), Exhibit C-153.

For the actual data, see Exhibit C-154, questionnaire responses of study conducted by Massachusetts Executive Office of Consumer Affairs on placement and employment aspects of private trade and technical schools.

[68] Id. at p. 18.

Commission staff and others have conducted similar surveys of employers, obtaining similar results for many occupational areas.[69] For many jobs there is virtually no demand for proprietary school graduates and no particular credence is given to a proprietary school certificate. This conclusion is supported by various manpower projections that see an excess supply of persons looking for many of the same jobs for which proprietary schools purport to prepare thousands of enrollees.[70] For example, the state of California found even for those occupational areas without excess supply, openings require work experience or some other form of qualification proprietary graduates do not have.[71] Other states have reached similar conclusions.[72]

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[69] The Chicago Regional Office of the Federal Trade Commission conducted a study in late 1972 of the job prospects for a number of the areas where proprietary vocational schools were making job claims. The results show that in many of these areas there is virtually no demand for graduates of proprietary vocational schools. Chicago F.T.C. regional Office Summary of 6(b) reports (November, December 1972; January 1973), B-15. F.T.C. staff also conducted two telephone surveys of prospective employers: one in Washington, D.C. in late 1972 and one in Cleveland in mid-1973. The surveys, while not comprehensive enough to be definitive, did show a mixed picture with certain secretarial schools demonstrating good reputations and placement success with employers while broadcast-announcing schools, airline training and fashion design schools received low marks from employers. Hotel-motel, computer courses, real estate, cosmetology and dental and medical show a more mixed picture, somewhere between the two aforementioned extremes. Telephone Survey of Prospective Employers, Washington, D.C. area (December 28, 1972) and Cleveland, Ohio Area (May 14, 1973), Exhibits C-76 and C-131.

San Francisco Consumer Action in November, 1975 surveyed a random selection of employers in the San Francisco area who might offer jobs to graduates of proprietary vocational schools. The objective of the telephone survey was to see what types of information the typical consumer might be able to obtain by contacting potential employers, as is suggested by the Commission's own consumer education literature. SFCA's findings fit the same pattern described above. Doctors stated dissatisfaction with graduates of proprietary medical assistance courses. All employers of computer programmers contacted said that a proprietary vocational school course was insufficient background for such employment. Similar results were obtained after interviewing broadcast stations concerning their hiring policies for electronic technicians. They generally hired individuals with either experience or a public school degree. A proprietary school graduate had a better chance with an electronics company, but here opportunities were still infrequent; testimony of David Davreux, representing Consumer Action, Tr. 3794.

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[70] The Employment Development Department for the State of California in explaining its data on supply and demand for jobs in the fourth quarter of 1974 stated:

> Because the recent general economic downturn has adversely affected all of the State's labor market areas, the current report (copy enclosed) lists only a very few occupations in which there is a current shortage of qualified workers. Statements for other listed occupations not only indicate a general surplus of applicants, but those with a balance supply-demand contain important qualifying remarks which reflect limitations in the conditions of work experience requirements or hours of work.

Letter from R. L. Camilli, California Employment Development Department, to G. Choi, San Francisco F.T.C. Regional Office (November 25, 1974), Exhibit C-134.

[71] The California Employment Development Department describes the employment picture for particular occupations in particular regions. For example, in the Fresno SMSA for Dental Assisting, a common and popular proprietary vocational school program, there is a "supply of non-certified assistants. Intermittent demand for qualified experienced applicants"; for refrigeration mechanics there is a "shortage of skilled journeymen. Surplus of trained applicants who lack experience." In Sacramento there are for television and radio repairers "few opportunities for trainees. Demand for repairers experienced in color as well as black and white TV repair." In the Salinas-Seaside-Monterey SMSA, for accountants, "supply exceeds demand. Employers want experience,"; for auto mechanics, "continuing long term need for highly skilled journeymen, but little possibility for apprenticeships or minimally qualified applicants." In San Francisco there is a "surplus of qualified registered inhalation therapists, and moderate demand for well-qualified computer operators, especially with experience on 370 series. Surplus of partially trained or with little work experience." While there is a demand in some areas for some types of skilled workers with no work experience, the total overall picture follows the pattern described by the above quotations. Letter from R. L. Camilli, California Employment Development Department, to G. Choi, San Francisco F.T.C. Regional Office, (November 25, 1974), with California Labor Supply and Demand (October-December, 1974), Exhibit C-134. (Continued)

71 (Continued)

For the second quarter of 1975 for the Los Angeles and Long Beach area, the report finds for electrical and electronic technicians: "Technicians still in surplus, but demand edging up. Two or more years experience and knowledge of electronic theory is usually required." For computer operators, "many applicants compete for relatively few openings. Several years experience on large computer systems usually specified." For radio, TV repair "a surplus of applicants with little experience. Some openings for skilled journeymen with color TV backgrounds and their own tools." "Los Angeles, Long Beach Labor Supply and Demand," Employment Development Department, April-June 1975, Exhibit C-237.

This same pattern emerged for similar California studies, "San Francisco Oakland Manpower - 1972-75", California Employment Development Department (January, 1974), "California Labor Supply and Demand," Employment Development Department, Employment Data and Research, Sacramento, California, April-June 1975, Exhibit C-244; letter from Charles Orloff, California Employment Development Department, to G. Choi, San Francisco F.T.C. Regional Office (October 31, 1975), with "California Labor Supply and Demand, October-December 1975" and other regional California labor market publications, Exhibit C-250; "San Francisco-Oakland Manpower - 1972-75," California Employment Development Department (January, 1974), Exhibit C-93; "California Labor Supply and Demand, July-Septemer, 1974", California Employment Development Department, op. cit., Exhibit C-73; "California Manpower 1972-75", California Employment Development Department (January, 1974), "California Labor Supply and Demand, July-September, 1974," California Employment Development, Exhibit C-95; "California Labor Supply and Demand, October-December, 1974," California Employment Development Department, Exhibit C-96; "California Manpower 1972-75," California Employment Department, January 1974, Exhibit C-97; "San Diego County Manpower 1972-75", California Employment Development Department (April 1974), Exhibit C-98; California Labor Supply and Demand, Employment Development Department, January-March 1975, Exhibit C-198; "Los Angeles Manpower 1972-75", California Department of Human Resources Development (November, 1972), Exhibit C-99; "Orange County Manpower 1972-75", California Employment Development Department (May, 1974), Exhibit C-100; "San Bernadino-Riverside Counties Manpower 1972-75", California Employment Development Department (February, 1975), Exhibit C-102; "Ventura County Manpower 1972-75," California Employment Development Department (January 1, 1974), Exhibit C-103.

72 A manpower survey for the State of Illinois produced very similar results, even for the early 1970's when the unemployment rate was lower. For example, for computer programmers, "employers will continue to be specific in their requirements for training and experience. Workers with only minimal qualifications may encounter difficulties securing employment."

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A number of representatives from employment agencies confirm this finding. One owner of an employment agency in Boston testified to his experiences in trying to place 4,000 to 5,000 graduates from hundreds of proprietary vocational schools. He stated that his success in finding placement for such graduates in a related field was negligible.[73] Others have had similar experiences.[74]

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[72] (Continued)

The ratio of applicants to openings was put at 10:1, for medical lab assistants, at 22:1. A surplus of keypunch operators was found in Chicago. Tractor trailer truck driver positions are filled by referrals by the appropriate union. Employment Outlook for Forty Selected Occupations, Illinois Dept. of labor (1972), summarized in M. Nozette, F.T.C. Chicago Regional Office, memorandum re: Vocational Employment Opportunities in Illinois (June 15, 1972), Exhibit C-63. See also attachment to testimony of John Wich, Associate Professor, University of Oregon, for comparable Oregon statistics, Exhibit L-53; "Jobs for Which...", series of five pamphlets published by the Bureau of Labor Statistics, provides parallel national data, Exhibit C-202.

[73] See, e.g., testimony of B. Freelander, President, Fortune Personnel Agency, Tr. 97.

[74] An employment agency with fourteen years' experience has seen hundreds of vocational school graduates looking for work. Some students were graduates from courses in fields where demand is virtually non-existent. Employers in other fields only hire college graduates. For example, the agency has never been able to place a vocational school student as a computer programmer. On the other hand, the agency stated that schools can prepare students for certain related jobs, such as in electronics and drafting. Statement of George Brady, Placement Counselor, Eastern Employment Service, Boston, Massachusetts (October 7, 1974), Exhibit C-177.

Another employment agency has been very unsuccessful in trying to place graduates of proprietary schools in paralegal courses. Letter from Mary Souza, Mary Souza Personnel Agency, San Francisco, California (December 6, 1974), Exhibit C-227.

Yet another agency could not place graduates of computer training courses but said it could place accounting graduates. Letter from Don Knowles, Don Knowles Personnel Agency, Fresno, California (December 5, 1974), Exhibit C-288.

While this evidence points to a general pattern of minimal demand for proprietary school graduates, certain specific occupational areas that attract numerous private school graduates show an even worse situation.

Computer programming is one such occupation. Several studies show that proprietary schools have turned out a surplus of tens of thousands of graduates from computer programming courses who cannot conceivably be absorbed into the market as programmers.[75] Numerous employers and employment agencies have similarly commented on the inadequacy of a proprietary vocational school course as preparation to become a computer programmer or a closely related professional.[76]

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[75] The American Federation of Information Processing Societies (AFIPS) conducted surveys of the source and employment of trained computer personnel to see how supply and demand matched. AFIPS' conclusion was that there was a strong imbalance between entrants into the field and jobs available. Of those entering the labor market, 3,800 had BA's, BS's, MA's or Ph.D.'s, 5,000 had associate degrees, 7,600 were high school graduates, 27,000 public vocational school graduates, and 79,000 private vocational school graduates. Of this 79,000, 43,000 graduated courses in programming. (This figure is down from 1969 when AFIPS estimated that anywhere from 100,000 to 200,000 students graduated proprietary vocational school courses in computer programming). On the other hand, only six percent of those with jobs in the field had attended proprietary residence schools and four percent took a correspondence course. Gilchrist and Webster articles (title below), reprinted from AFIPS Conference Proceedings, Spring Joint Computer Conference (1972), "Sources of Trained Computer Personnel; a Quantitative Survey", "Employment of Trained Computer Personnel; a Quantitative Survey", Summary Report of the 1971 AFIPS Information Processing Personnel Survey, issued October, 1971, p. 639, Exhibit C-22.

See also testimony of Bruce Gilchrist, Director of Computing Activities at Columbia University, Chairman of the Statistical Research Committee, and former President and Executive Director of the American Federation of Information Processing Societies, Inc., board member of the Northern Westchester and Putnam Counties, New York, Board of Cooperative Educational Services, Tr. 3002; Thomas C. White, "An Assessment of Private EDP Education in the United States," Exhibit C-61; Wilms at note 35 supra.

[76] Interview report with Dennis M. Sheehy, Assistant Personnel Manager for Support Placement, TRW Systems group, Washington, D.C. (July 23, 1970), Exhibit C-25; letter from Richard F. Castro, President, Cal-Data 5 Agency, (December 4, 1974), Exhibit C-229; statement of Cicely H. Stetson, Assistant Vice-President, First National Bank of Boston (October 15, 1974), Exhibit C-170; testimony of Bernard Freelander, President,

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Similar problems arise in the medical-dental occupational area. The California Department of Consumer Affairs conducted a survey of private dental assistant and medical assistant vocational schools during 1972 and 1973. The study found that the:

> majority of graduates are disappointed in the results experienced after completion of vocational school training. Throughout their training they are led to believe there will be no difficulty in finding employment, when in fact, most find that experience or an AA degree is required to gain employment.[77]

The study describes how the best student in one proprietary school class could not find a job.[78] Other studies[79] and comments on the public record[80] reinforce this finding.

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[76] (Continued)

Fortune Personnel Agency, Tr. 103; testimony of David J. Heller, Vice President, Career Data Personnel Agency, Inc., Tr. 5442.

See also New York State Public Hearings in the Matter of Computer Schools, Exhibit A-9.

[77] See Memoranda from California Department of Consumer Affairs re: Private Vocational School Survey, Dental and Medical Assistants, (October 16 and October 24, 1973), Exhibit G-68; Vocational School Survey, by Department of Consumer Affairs, State of California (October 16, 1973), Exhibit C-236.

[78] Id.

[79] One study shows that on the average there are only .16 medical assistants per physician. Moreover, physicians prefer individuals with an associate of arts degree and many think a hospital is the only place to train such an allied health worker. In addition, only three out of 204 hospital personnel directors reported a shortage of medical assistants, and none reported a shortage of dental assistants.

M.L. Dolbman, B.S. Holland, and F.B. Rogers, "New Directions in Allied Health Manpower," Report to Division of Manpower Development and Training, USOE, and Retraining Section, Pennsylvania Department of Education, Temple University, (May 1974), p. 62, Exhibit C-132.

[80] The head of health-related training in New York of the union for the Municipal Hospital System testified that proprietary vocational school courses could not qualify one for most medical positions. To be a nurse's aid required no background, and, beyond that, one had to enter a training course offered (Continued)

In another field, television repair, a 1974 report prepared by the Center for Policy Alternatives at the Massachusetts Institute of Technology predicts that the demand for television service personnel will decline about 9,000 positions between 1970 and 1980.[81] Despite this fact, vocational schools describe the field as "rapidly growing"[82] and one correspondence school alone has actively enrolled over 100,000 students in a television repair course,[83] not to mention the tens of thousands of students enrolled in TV repair courses in other correspondence and residence schools.

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[80] (Continued)

by the hospital to be upgraded. In other words, the union has imposed a strict system for qualification for most positions, with completion of a proprietary school program not being sufficient. In addition, the employment picture even through these channels is virtually non-existent; testimony of Judith Lederer, representing the health training area of the Municipal Hospital System, Tr. 1234.

The employment chairperson for a dental assistants society states that placement services and instruction are often inadequate at proprietary vocational schools and that the students are not eligible to apply for the American Dental Assistants Association Certification examination. The courses are not approved by the Council of Dental Education of the American Dental Association; letter from Sandra Alvarado, President, Diablo Dental Assistants Society, Contra Costa County, California, (received December 27, 1974), Exhibit C-183.

A medical employment agency writes that employers do not have a good attitude toward graduates of proprietary vocational schools or correspondence courses, that employers prefer to train their own workers. Employers will only go to a recent graduate of a medical vocational school as a last resort. In addition, the agency finds much of the instruction inadequate. Letter from Rex R. Schmidt, Director, Bay Medical Associates Agencies, San Francisco, California (January 7, 1975), Exhibit C-226.

[81] "The Productivity of Servicing Consumer Durable Products," The Center for Policy Alternatives, Massachusetts Institute of Technology with the Charles Stark Draper Laboratory, Inc. (1974), Exhibit C-241.

[82] See e.g., letter from Marvin A. Sirbu, Jr., Massachusetts Institute of Technology, Cambridge, Massachusetts, (May 12, 1975) (with reference in text to C-241), Exhibit C-242.

[83] See, e.g., letter from Raymond C. Clevenger, Wilmer, Cutler & Pickering, Washington, D.C. (November 21, 1975), Exhibit K-856; "B & H Comment," K-856.

A major airline commented that attending an airline training course at a proprietary vocational school is of no practical value in obtaining employment in the field.[84] In addition, some airline schools have a virtually zero placement rate.[85]

One of the most widespread and uniform complaints by employers relates to truck-driving and heavy equipment schools. These employers state that most graduates cannot obtain the type of employment they were seeking when they enrolled. They are not hired for a variety of reasons--inadequate training, lack of union membership, below minimum age requirements, or not enough experience with tractor trailers or regular trucks.[86] Yet truck driver training schools continue to enroll thousands of students each year.

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[84] United Airlines commented that no special consideration is extended to individuals who have attended airline training schools, and once hired, the airline training school graduate receives the same training as all other newly hired employees. The airline looks more favorably at other types of training than proprietary airline schools, such as a general college background. United does recruit graduates from several airline and powerplant mechanics proprietary schools. Letter from Clark E. Luther, Vice President, System Personnel, United Airlines, Chicago, Illinois (December 30, 1974), Exhibit C-163. See also letter from John Russell, Employment Manager, United Airlines, Western and Pacific Personnel Region, San Francisco, California (December 30, 1974), Exhibit C-224.

[85] An investigation of one airline school found that of 100 enrollees, none were placed in jobs they expected to get. Testimony of P. Gasell, attorney for Legal Services for the Elderly Poor, former staff attorney for New York City Department of Consumer Affairs, Tr. 1355; questionnaires completed by Weaver Airline Personnel School Students for F.T.C. Kansas City Regional Office, 722-3149, Exhibit D-104; manuscripts of hearings in the matter of Weaver Airline Personnel Schools, Inc., et al., Docket No. 732-3167, Kansas City F.T.C. Regional Office, October-November, 1972, Exhibit E-158; interview reports with former students of Weaver Airline Personnel School (722-3149, DK3 00040), Exhibit D-105; testimony of Warren Randolph, salesperson, Weaver Airline Personnel School, ITT Technical Institute, Boston, Lafayette Home Study School, Tr. 450; interview reports with former salesmen of Weaver Airline Personnel School (722-3149, DK3 0004), Exhibit E-105; response to accreditation commission questionnaire replacement service of Weaver Airline Personnel School (722-3149, DK3 0004), Exhibit C-74; placement information distributed to students of Weaver Airline Personnel School (722-3149, DK3 0004), Exhibit C-75; testimony of P. Westerman, parent of applicant, Weaver Airline Personnel School, Tr. 1628.

A number of schools advertise job opportunities with the United States Government--either postal or civil service. What the schools actually do is sell a correspondence course that purports to prepare individuals to take the postal and civil service exams. Evidence on the record suggests that such correspondence courses may be virtually worthless.[87] Even if an individual can pass the exam, this is no guarantee of a job. In some cities there are waiting lists months long to get a job, and the exams are not even offered until the waiting list decreases.[88]

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[86] An Army colonel testified to the inadequacy of the American School of Heavy Equipment's course. He consulted with a number of Army engineers and contractors and concluded that the instruction was worthless. Instead of learning by correspondence and a few weeks of intensive hands-on and classroom instruction to learn to operate just one type of equipment, one needed extensive on-the-job experience. Testimony of Colonel Donn Grand Pre, USAR, M.S., Engineering, formerly assigned to engineer school, Ft. Belvoir, Virginia, father of would-be applicant, American School of Heavy Equipment, Tr. 2538; correspondence, interview reports re: North American Training Academy (732 3362), Exhibit C-49. See also testimony of Sid Maniloff, Personnel Manager, Willett Company, Tr. 7863; testimony of A. Fox, attorney, Public Citizens Litigation Group and Counselor for the Professional Driver Council for Safety and Health, Tr. 2790; testimony of George Franklin, Director of Safety and Claims for Custom Cortage Company, Tr. 1420; letter from Maurice Sykes, Project Director, Recruitment and Training Program, New Haven, Connecticut, to Joanne Faulkner, New Haven Legal Assistance (August 22, 1974), re: American Training Services, Exhibit C-155; testimony of L. Glick, Office of the Attorney General, State of Maryland, Tr. 3018; testimony of R. Siler, Director, Veterans Education and Training, West Virginia Department of Education, Tr. 2245.

[87] Materials received from Rhode Island Legal Services, Exhibit D-265; testimony of G. Yesser, attorney, Rhode Island Legal Services, Tr. 534.

[88] General Training Service, Exhibit C-210. See also letter from R.B. Eddy, U.S. Civil Service Commission to Accrediting Commission, National Home Study Council (May 24, 1974), re: Lincoln Service, Inc., Exhibit C-148; op. cit., Tr. 534; Petition for License Revocation in the matter of General Training Services, Inc., to New York State Department of Education, by Elinor Guggenheimer, New York City Commissioner of Consumer Affairs (1974), Exhibit D-196; State of Missouri (Continued)

Similarly, it is difficult or virtually impossible for a proprietary vocational school student to become a park ranger,[89] a fashion model,[90] or a detective,[91] despite the many students enrolled in these type courses.

2. Adequacy of Training and Placement Services

While in a number of fields employers do not hire proprietary vocational school graduates, in others, the courses can lead to employment. Nevertheless, many students find the particular course in which they enrolled inadequate to fill their needs. They thus fail to get a job not because they enrolled in a proprietary vocational school course, but because of the particular school from which they chose to take that course.

This can be seen most clearly in the case of vocational courses not approved by the appropriate professional organization. For example, both the chief of respiratory therapy and a clinical instructor at a California hospital stated that most of the proprietary schools offering respiratory courses in Los Angeles are not AMA approved and, therefore,

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[88] (Continued)

v. Larry Northrip, d/b/a Special Training Institute and Southern Training Center, Petition for Injunction, Cause No. 56123 (February 25, 1974), Exhibit D-308.

[89] A number of government sources were emphatic about the inadequacy of a correspondence course to qualify an individual for a job as a park ranger or in related jobs in conservation. Attachments to National School of Conservation correspondence. Interviews with Chief, Employment Branch, Soil Conservation Service, U.S. Department of Agriculture; Personnel Staffing Specialist, Forest Service, U.S. Department of Agriculture; Employment Specialist, National Park Service, Department of the Interior, Exhibit C-210.

[90] The head of the major New York modeling agency, Eileen Ford, testified that out of thousands of models she has hired over the last 22 years, two had gone to modeling schools. There are about 300 working models in New York City, a large portion represented by her agency. Most of these models work for ten to fifteen years, so there are very few openings each year. In addition, she stated that vocational training is irrelevant to modeling since it is based almost solely on personal appearance. For example, the two graduates from modeling school she did hire got their jobs on their appearance, not training. Testimony of Eileen Ford, Tr. 1319.

[91] See, e.g., testimony of R. Simmons, President, Simmons Detective Agency, Tr. 646.

the graduates are not eligible to take either the registry or certification exam. Moreover, they felt that many proprietary schools in Los Angeles do a marginal job of educating and their students have difficulty passing simple pre-employment exams.[92]

The public record is filled with a multitude of other examples of courses providing inadequate training, which prevents the students from obtaining the type of job for which they enrolled.[93]

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[92] Letter from John Bullock, ARRT, Chief of Respiratory Therapy, and Luana Luizzie, ORRT, Clinical Instructor, Valley Presbyterian Hospital, Van Nuys, California (November 8, 1974), Exhibit C-120. Similarly, the Education Director for a college respiratory care program testified about a school that was neither AMA approved, nor a two-year program, so that graduates could not take the registry or certification exam, despite what they were led to believe upon enrolling. In addition, he reported that local hospitals found graduates of this proprietary school inadequately prepared. Testimony of Howard Chuntz, Respiratory Care Program, Orange County College, Tr. 5401.

[93] Statement of Cicely H. Stetson, Assistant Vice-President, First National Bank of Boston (October 15, 1974), Exhibit C-170; statement of Dick Ray, Manager, Service Department, Libon Motors Volkswagen, Allston, Massachusetts (October 1, 1974), Exhibit C-176; Carl Bernstein, Series on Career Schools, _The Washington Post_ (July 12-15, 1971), Exhibit D-69; correspondence, interview reports re: North American Training Academy (732-3362), Exhibit C-49; transcripts of hearings in the matter of Weaver Airline Personnel Schools, Inc., _et al._, Docket No. 732-3167, Kansas City F.T.C. Regional Office, October-November 1972, Exhibit E-158; correspondence regarding payment of refunds by Career Enterprises, Inc. (712-3709), Exhibit D-268; statements of several former students of ECPI of Santa Clara Valley, California (March 1975) with attachments, Exhibit D-271; testimony of Philip Gasell, attorney at the Legal Services for the Elderly Poor, former staff attorney with the New York City Department of Consumer Affairs, Tr. 1345; affidavits of Hal R. Mitten and others re: Austin's College of Business Administration (August 21, 1970), Exhibit A-16; letter from Ms. Joanne S. Faulkner, attorney, New Haven Legal Assistance Association, Inc., New Haven, Connecticut (October 2, 1974), Exhibit A-39; Summary of Experience with Proprietary Vocational and Home Study Schools, San Francisco Neighborhood Legal Assistance Foundation, Central City Office (August 13, 1974), Exhibit A-68; interview reports with former students of Fall's College, Atlanta, Georgia (1970), F.T.C. Atlanta Regional Office, File No. 702-3123, Exhibit C-30; statement of Betty McCullough, Oakland, California (November 6, 1974), Exhibit C-108; statement of Tricia Convey, Costa Mesa, California, former student of

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93 (Continued)

Blair Colleges (November 6, 1974), Exhibit C-117; statement of Alexander Miguel, San Francisco, California, former Control Data Institute student (December 3, 1974), Exhibit C-136; statement of Debra J. Boek, Sacramento, California (December 23, 1974), Exhibit C-164; statement of Charles Spencer Williams, former instructor at Associated Colleges (December 1974), Exhibit C-194; statement of Gery L. Bronson, former student of New England Tractor Trailer Training, Union, New Hampshire, Exhibit C-122; statement of Lester Williams, former student of West Coast Schools, Los Angeles, California (April 8, 1975), Exhibit C-223; statement of Robert A. McNamara, Tualatin, Oregon, former student of Heald Business College, San Jose, California (December 2, 1974), Exhibit C-249; Neighborhood Consumer Information Center--Summary Major Consumer Complaints received by NCIC about Proprietary Vocational Schools (March 13, 1974), Exhibit D-20; statement of Chesterfield Jones, Pacifica, California, former Control Data Institute student (November 29, 1974), Exhibit D-177; letter from H.W. Samson, Boston Legal Assistance Project, to K. Barna, Boston F.T.C. Regional Office (July 10, 1974), with demand for relief letter to Electronic Computer Programming Institute, New York, New York (July 8, 1974), Exhibit D-182; letter from H. Young, Boston Legal Assistance Project, to K. Barna, Boston F.T.C. Regional Office (September 25, 1974), with demand for relief letters to ITT Technical Institute, Boston, Exhibit D-183; statement of Steven Chin, former LaSalle Extension University Student (November 15, 1974), Exhibit D-185; interview report with Ms. Karen Spiegal, former student ITT Technical, Boston (November 12, 1974), Exhibit D-214; statement of Joel Botelho, former student of Universal Insurance School, Dallas, Texas, and LaFayette Academy, Providence, Rhode Island (October 17, 1974) Exhibit D-219; Complaint for Damages (Fraud and Deceit; Breach of Contract; Recision), James Vogus, et al. v. West Coast Trade Schools, et al., Superior Court of the State of California for the County of Los Angeles, Docket No. 962294 (October 2, 1969); statement of Dennis Oubre, former student of Ryder Technical Institute, Inc., Atlanta, Georgia (January 24, 1975), Exhibit D-251; letter from Richard N. Heinz, former student of Ryder Technical Institute, Ardmore, Oklahoma (February 5, 1975), with attachments, Exhibit D-252; statement by Diane Allen, former student of Oakland College of Dental-Medical Assistants, Napa, California (June 26,1975), with attachments, Exhibit D-285; statement of Mary E. Parent, former student of Sawyer College (May 23, 1975), Exhibit D-290; statement of Paskill Poindexter, former ECPI student (January 8, 1975), Exhibit D-304; statement of Lillian Bell, former student of Advance Schools, Inc., Oakland, California (February 11, 1975), Exhibit E-216; Complaints filed against Career Enterprises, Inc., in Superior Court of California and U.S. District Court (Kansas), Exhibit E-219; remarks by Kehoe, Director of the Department of Consumer Affairs for the California Department of Consumer Affairs Hearings on Vocational Schools, Los Angeles, California (December 10, 1973), Exhibit G-64; letter to

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David Butler, Counsel for Career Academy, from Bruce Snyder, F.T.C. (July 27, 1972), Exhibit I-34; testimony of Elena Pardo, parent of former ITT student, Tr. 116; testimony of Hollis Young, attorney with the Boston Legal Assistance Project, Tr. 364; testimony of Robin Thompson, former ITT student, Tr. 888; testimony of William Joquin, former student, Interstate Tractor Trailers, Inc., Tr. 981; testimony of Earl Allen, former student, Control Data, Newark, New Jersey, Tr. 1016; testimony of Rose Karps, former student, Metropolitan School of Infant and Geriatric Care, Tr. 124; testimony of Gail Alterman, former student, Metropolitan School of Infant and Geriatric Care, Tr. 1248; testimony of Stephen Newman, Assistant Professor of law, New York Law School, former Director of the law enforcement division, New York City Department of Consumer Affairs, Tr. 1497; testimony of Marilyn Norton-Griffith, former student, ECPI, Tr. 1525; testimony of Mary Echols, former student of General Training Service, Tr. 1636; testimony of Lois Marshall, Dean of Community Service, Bergen Community College, Bergen, New Jersey, Tr. 1692; testimony of Steve McCabe, Senior Staff Attorney, Middlesex County Legal Services, Perth Amboy, New Jersey, Chairman of the New Jersey Legal Services Consumer Protection Economic Development Committee, Tr. 1777; testimony of Joanne Faulkner, attorney, New Haven Legal Assistance Association, Tr. 1390; letter from Mark Olds, WWRL, New York, New York, to Richard Givens, New York F.T.C. Regional Office, (November 26, 1974), Exhibit C-156; letter from Rex R. Schmidt, Director, Bay Medical Associates Agencies, San Francisco, California, Exhibit C-226; letter from Mary Souza, Mary Souza Personnel Agency, San Francisco, California (December 6, 1974), Exhibit C-227; letter from Richard F. Castro, President, Cal-Data 5 Agency, Oakland, California (December 4, 1974), Exhibit C-229; testimony of Bernard Freelander, President of Fortune Personnel Agency of Waltham, Inc., Waltham, Massachusetts, Tr. 97; testimony of Margaret Capabianco, former student, ITT Technical Institute, Boston, Massachusetts, Tr. 82; testimony of Judith Lederer, Director of Health Related Training Programs, City Health and Hospital Corporation, District 37, Tr. 1234; testimony of Leslie Glick, Office of the Attorney General, State of Maryland, Tr. 3018; Veterans Administration, DVB Circular 22-74-2 (March 27, 1974) "State Approving Agency Reimbursement Contracts Fiscal Year 1975", Exhibit H-39; testimony of Robert L. Siler, Director, Veterans' Education and Training, West Virginia Department of Education, Tr. 2245; "Is Home Study Biz A Rip-Off?" by Russell A. Lewis, former instructor, Commercial Trades Institute, Exhibit D-33; "Annual Fall School Guide," Chicago Tribune (August 13, 1972), Exhibit D-84; letter to F. Albanese, Ohio Board of School and College Registration, from P. Campbell, Better Business Bureau of Akron (October 27, 1971), re: fraudulent advertising by Express, Inc., and lack of employment opportunities, Exhibit D-94; "Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program", Office of Education, HEW, Region IV, Atlanta, Georgia (April 1974), Exhibit H-201.

A long-time instructor at one of the largest home study schools, M-W Education Corporation (M-W)--owner of Commercial Trades Institute--and a text writer for other correspondence schools, testified to the virtually non-existent level of instruction and the general inadequacy of course materials and equipment at some correspondence schools. He enrolled in seven correspondence courses and found that six "failed miserably".[94] He found other courses to be seriously out of date. One automobile course included a section on a system that was obsolete 25 years ago.

He also described how at M-W several instructors would handle about 116,000 lessons a month. Graders with no interest or background in the subject area would mechanically grade multiple choice questions. An instructor would not even supervise them or see how an individual student was progressing. Their sole function was to respond to individual inquiries.[95] Of course, if even a fraction of the 116,000 lessons were ever accompanied by such questions, the school would not be able to function. In short, this testimony showed that students who believe they are buying some form of particularized instruction in an occupational area are actually paying hundreds of dollars to have multiple choice questions mechanically graded in courses with outdated and inadequate course materials and equipment.

The same instructor, after leaving M-W in disgust, taught at a residence school and found conditions just as bad.[96] Most teachers had never taught before and there was virtually no equipment.

In another instance, a whole class at one NATTS school brought a class action against the school--in part because of inadequate instruction and facilities. The class claimed that one of their instructors would go to school the night before to learn what to teach the next day.[97]

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[94] These six courses were offered by McGraw-Hill, M-W, International Correspondence School, and National Trades Institute.

[95] See, e.g., testimony of Joseph W. Benkert, President of Aviation Careers Institute, member of the Massachusetts Department of Education, Aviation Education Advisory Council, Secretary/Treasurer of the Massachusetts Aviation Trades Association, Tr. 786.

[96] Continental Institute of Technology, Chicago, Illinois. Testimony of Russell A. Lewis, instructor, former M-W-NHSC examining team, Tr. 7224.

[97] See testimony of James Meadows, former student of Greer Technical Institute, Tr. 8782; testimony of Robert Borden, student, Electronic Computer Programming Institute, Tr. 3456.

Another cause of the low placement rates at many schools is the ineffective or non-existent placement service. Many home study schools, in particular, do not have placement services at all. They claim that placement is not part of their function: education is their sole responsibility.[98] But this does not prevent many sales agents from either claiming, or leaving the impression with enrollees, that the school will help them get a job.[99]

Other schools utilize advertising and catalogues to offer placement services when, in fact, they provide little, if any, placement assistance of any kind. A number of students have complained that their school's placement service did little more than clip ads out of help-wanted sections and pass these on to students. Other students even have difficulty finding the placement office open. Another often cited problem is when a placement office, after promising to provide graduates with jobs, never again contacts the graduates. Yet another complaint is that jobs the placement office finds are not the same that the school originally advertised.[100]

Thus, many schools just do not put the effort into placement. The student is already obligated for full tuition by that time, and the schools have little incentive to invest resources in placing graduates. A school's actual placement rate is only disclosed by a few schools, so not placing graduates does not put a school at a competitive disadvantage.[101]

3. Student Qualifications

Even if a consumer chooses an occupational area where there is a demand for graduates of proprietary vocational schools, and even if a course is selected that offers adequate training, the graduate still has no guarantee of a good chance of employment. Many students are unqualified for certain jobs before they enroll and, no matter what they learn in the interim, they will be unqualified when they graduate. This is not surprising considering the type of random recruitment many schools use.[102]

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[98] See, e.g., comments of NHSC, Exhibit K-439; NHSC Self-Evaluation Reports and Chairman's Letters, Exhibit F-64.

[99] See Part I, Section IV-B, supra.

[100] See Part I, Section IV-B(1), supra, for a detailed listing of these and other complaints about inadequate placement services.

[101] See text at notes 3-7 supra.

[102] See Part I, Section V-B and C, supra.

One striking example of such random recruitment is of an individual with an IQ of 55, a third-grade reading and math level "at best", whom public vocational schools found incapable of learning any skilled or semi-skilled trade. The state vocational rehabilitation officer found the student suited only for "simple repetitive" tasks such as dishwashing. This individual became enrolled simultaneously in three large proprietary home study schools (the American Training Service (ATS), LaSalle, and M-W)--all accredited by the National Home Study Council. The student's course at ATS was a combined correspondence and residence truck driving course, at LaSalle it was diesel mechanics, and at M-W, automotive mechanics. The enrollee had two federally insured student loans. In addition, the individual had never even heard of M-W although the school listed him as actively enrolled.[103] Apparently the student got the three courses mixed up with each other.

In another example, an attorney wrote that a client was enrolled in a secretarial course with a Federally Insured Student Loan despite the fact that the individual "suffers from a severe speech defect which renders her virtually incommunicado, from further mental disabilities ... [and] some level of retardation."[104] Similarly, several state health agencies and physicians have complained on behalf of students whose mental or physical handicaps precluded them from taking the training for which they had been enrolled or from obtaining employment.[105] Some letters had to be translated from originals written in Spanish by students who could not understand English well enough to read the correspondence lessons for which they had contracted. One letter came from the relative of a state prison inmate (with a Federally Insured Student Loan) who, while incarcerated, had been enrolled by a salesperson, but who was prevented by prison rules from receiving the electronics kits which were part of the course.[106]

The grammar and spelling of some complaint letters were evidence in themselves of the inadequate background of many proprietary school enrollees.[107] Numerous other letters tell of disappointed students who, although assured by sales agents that they were qualified for high-level jobs, found out later that this was far from the truth.[108]

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[103] Petition on the matter of the appeal of SECSA (Students for the Elimination of Computer Schoool Abuses) and Walter DeLegalls against the Commissioner of Education of the State of New York, Exhibit E-164.

[104] Student complaint letters, Exhibit J-1.

[105] Id.

[106] Id.

[107] One student wrote that the salesperson told him he "did not haft [sic] to have much eduretion [sic]" for a highly technical course, but found he "could not make heads our [sic] tails of ther [sic] lessons" when he began the course. Id.

These are not isolated instances. The record contains numerous documents testifying to the fact that many enrollees do not have the personal qualifications--whether it is age, aptitude, physical abilities or otherwise--to obtain employment in the occupational field for which the school offers vocational instruction.[109]

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[108] A Los Angeles computer school graduate who found that there were no jobs available for computer programmers who did not possess both a college degree and experience, wrote that the school's placement service offered him only one job, and that was for "parking cars". He later answered an ad placed by another computer school, and after deliberately failing the school's aptitude test, was still pressured by the salesperson to enroll. *Id.*

[109] *See*, *e.g.*, statement of Debra J. Boek, Sacramento, California (December 23, 1974), Exhibit C-164; State of Missouri v. Larry Northrip, d/b/a/ Special Training Institute and Southern Training Center, Petition for Injunction, Cause No. 56123 (February 25, 1974), Exhibit D-308; testimony of Lois Marshall, Dean of Community Service at Bergen Community College, Tr. 1692; statement of Cicely H. Stetson, Assistant Vice-President, First National Bank of Boston (October 15, 1974), Exhibit C-170 (no aptitude for computer programming); statement of Dick Ray, Manager, Service Department, Libon Motors Volkswagen, Allston, Massachusetts (October 1, 1974), Exhibit C-176 (inadequate aptitude); testimony of Jonathan Epstein, staff attorney at Mercer County Legal Aid Society in Trenton, New Jersey, Tr. 1678 (poor eyesight); letter from J.M. Maraldo, Directing Attorney, El Monte Legal Aid Office, El Monte, California, to J. Doane. Los Angeles F.T.C. Regional Office (November 1, 1974), Exhibit A-71 (not sufficient skills to graduate); Summary of Experience with Proprietary Vocational and Home Study Schools, submitted by Gil Graham, San Francisco Lawyers' Committee for Urban Affairs (August 19, 1974), Exhibit B-81 (too young to get ICC license); materials received from Alexander MacNichol of Nisbet, MacNichol, and Ludwig, Attorneys and Counselors at Law, Exhibit B-81 (low aptitude); letter from J.E. Denvir, California Rural Legal Assistance, Marysville, California, to R. Sneed, San Francisco F.T.C. Regional Office, Exhibit C-90 (too young to get ICC license); statement of Gery L. Bronson, former student of New England Tractor Trailer Training, Exhibit C-221; statement of Jay Thompson, former student of Truckmasters (January 11, 1975), Exhibit D-240; "Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program," Office of Education, HEW, Region IV, Atlanta, Georgia (April 1975), Exhibit H-201; memorandum from A. Stahl

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F. Obtaining Placement and Earnings Information

While there is a demonstrated need for placement and salary information concerning recent students of proprietary schools, the feasibility of obtaining such information has been questioned. Commenters have disputed the ability to get responses to follow-up requests, insisted that students will not disclose salary data, and have pointed to the substantial cost of such tracking.[110] This section will show that schools can with a minimal added expense obtain almost universal placement and salary information from their graduates.

1. Non-Response Rates

There are two types of non-respondents: individuals who fail to reply to inquiries ("refusals") and individuals who never receive the inquiries ("unreachables"). The number of refusals a school gets will vary depending on the method it uses to contact its students. A single mailing will get a response rate anywhere from 20 percent to 50 percent.[111] Subsequent follow-up mailings can raise this figure considerably.

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[109] (Continued)

to R. Belair, re: enrollment of mentally retarded student in three accredited vocational schools (October 7, 1974), Exhibit E-194; testimony of Jackie Hunt, Director of Volunteer Services, Peter Bent Brigham Hospital, Tr. 725 (insufficient knowledge of English); correspondence, interview reports re: North American Training Academy (723-3362) (mental and physical deficiencies); Exhibit C-49; hearings, interview reports with students of Radio Broadcasting Associates, Jersey City, New Jersey, 1970-71, F.T.C. New York Regional Office, Case Nos. DJ7-and 712-3205, Exhibit D-51 (inadequate speaking ability for announcing job); letter from Linda B. Miller, former student of Draughon's Business College, Tennessee (June 11, 1975), with attachments, Exhibit C-240.

[110] See Part II, Section IV-C, infra.

[111] See materials from Dr. Kenneth B. Hoyt, Professor of Education, University of Maryland, Exhibit C-71; McGraw-Hill Comments, Exhibit K-900; Bell & Howell Comments, Exhibit K-856; exhibit to statement of Robert Barton and Frederick Greenman, LaSalle Extension University, Chicago, Illinois, consisting of Exhibits A through W attached thereto, Exhibit L-112; testimony of Frederick F. Greenman, of Linden and Deutsch, counsel to LaSalle Extension University, Tr. 8117; testimony of Dr. William D. Griffith, Research Specialist, Fairfax County Public Schools, Tr. 2642; testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495.

A researcher, experienced in follow-up studies of vocational school students, found that two questionnaires would elicit a 60 to 65 percent response rate. Additional mailings would raise this to 80 percent.[112] Additional mailings pick up more and more of the refusals, with the unreachable component staying constant.

Another research group stressed that refusals can be significantly reduced[113] by preparing students while they are in school to receive and return follow-up surveys.[114]

Yet another technique that can further reduce the number of refusals is telephone follow-ups. In fact, with such a technique, refusals are virtually eliminated. For example, one agency, in attempting to reach 171 correspondence school graduates, used telephone interviews and not one graduate refused to answer.[115] Even more dramatic was LaSalle Extension University's success in getting information from refusals by telephone follow-ups. LaSalle reported that in a survey of 4,928 graduates, telephone follow-ups of those not responding to two mail questionnaires produced only about a dozen refusals--or about one-fifth of one percent.[116]

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[112] Testimony of M.V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9467.

[113] The 65 percent and 80 percent results obtained above did not utilize this preparation stage. One would expect those percentages to be substantially higher if preparation had been done.

[114] Testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9509.

[115] The Wisconsin State approving agency for veterans' education did a telephone survey of veterans who had graduated from major correspondence schools from 1972 to 1974. That agency reached all 171 veterans with only 320 separate telephone attempts. LaSalle Barton Attachment, Schedule E, Exhibit L-112.

[116] See testimony of Frederick F. Greenman, of Linden and Deutsch, counsel, LaSalle Extension University, Tr. 8128; and LaSalle Attachment, Schedule D, Exhibit L-112.

The number of refusals also varies depending on the design of the questionnaire. For example, a survey that only asks placement and salary information would receive far fewer refusals than a lengthy, detailed questionnaire.[117]

Thus, a survey of graduates of a vocational school that prepared the students while still enrolled to respond, that used several mailings and a telephone follow-up, and asked only a few questions about jobs and earnings, would get virtually no refusals. Available evidence also predicts that any residual refusals would be more likely to be unhappy with the school than satisfied.[118]

Since refusals are not a significant problem if the survey is handled properly, the remaining issue is how substantial the number of unreachables is likely to be. The number of unreachables is essentially a function of how adequate and up-to-date a school's student records are. For example, one would expect to have trouble finding individuals who graduated three years ago if there were only three-year-old addresses on record. However, the picture is significantly different if one uses four-month-old information to contact a graduate--particularly if the information included several addresses and phone numbers, and even the addresses of relatives or friends.

One researcher has found that about five percent of proprietary vocational school graduates are unreachable after a year, and that less are unreachable a shorter time out.[119] Since staff's proposed Rule requires placement information four months after graduation, one would expect a very low unreachable rate. This is particularly true since the school, while the student is enrolled, can obtain detailed information on how best to communicate with the student four months hence. In addition, many schools already maintain contact with students during that four-month period through their placement services, contact with employers, and debt collection efforts.[120] In fact, a number of schools have testified that they know what happens to virtually 100 percent of their graduates.[121]

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[117] See, e.g., Donald A. Johnson, A Study of Differences Between Respondents and Non-Respondents when Various Follow-Up Approaches Are Used with Specialty Oriented Students, State University of Iowa (August 1974), Exhibit C-142; testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495; testimony of Dr. William D. Griffith, Research Specialist, Fairfax County Public Schools, Tr. 2642. Other factors such as the attractiveness of the questionnaire, the competency of the telephone interviews, or the incentive to respond can also affect the number of refusals.

[118] For example, one study compared characteristics of refusals to those of respondents to follow-up surveys of proprietary vocational school students. The study found that refusals tended to have less ability, have lower ratings by their instructors, and disliked their school and instructors more. Op. cit., Exhibit C-142.

[119] Testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9511; testimony of Dr. William D. Griffith, Research Specialist, Fairfax County Public Schools, Tr. 2642; testimony of Ernest Stromsdorfer, Director of (Continued)

Some industry members have particularly doubted their own ability to get salary information from students. Therefore, they claim that graduates may respond to questionnaires, but refuse to answer questions regarding their earnings. Since the staff's proposed Rule only requires schools to obtain information as to students' salary range, this discussion will be limited to evidence that demonstrates the feasibility of obtaining salary ranges and not precise salaries.[122]

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119 (Continued)

Evaluation, Department of Labor, Tr. 2456; testimony of Dr. M. V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9422; testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495.

[120] Moreover, even if a school loses contact, researchers have found methods to reach even these students. See Wellford W. Wilms, The Effectiveness of Public and Proprietary Occupational Training, Center for Research and Development in Higher Education, University of California, Berkeley, (October 31, 1974), Appendix A, Exhibit C-110; and testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9469. For example, special telephone directories, services of the post office, and information from neighbors, relatives and employers can be very useful.

[121] Testimony of Gordon Bay, President and School Director of Certified Welding School, Tr. 3687; testimony of Dick Blair, Owner, President and Director of Colorado Aero-Technical, Tr. 3721.

[122] Several experts have testified that students are far more willing to provide salary ranges than precise salary figures. See testimony of Dr. William D. Griffith, Research Specialist, Fairfax County Public Schools, Tr. 2642; testimony of Darryl Laramore, Supervisor of Vocational Guidance, Montgomery County Schools, Montgomery County, Maryland, Tr. 2960; testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495.

A researcher with an extensive background in surveying vocational school students has found that only one-half of one percent of students respond but refuse to answer salary questions.[123] Another researcher who has done follow-up studies of tens of thousands of vocational school students similarly has stated that only a negligible number of students refuse to provide salary information.[124]

During the course of this proceeding, school owners and operators often objected to the disclosure provisions of the proposed Rule arguing that collection and maintenance of placement data would be prohibitively expensive.[125] Evidence on the record, however, shows that not only can schools obtain universal responses, but that they can do so inexpensively. The expense associated with following up on student job success is a minimal amount per graduate. The additional expense the Rule's requirements place on what schools are already doing is even smaller.

In evaluating arguments about the cost of collecting placement data it is important to mention one caveat--the proposed Rule does not require either the collection of placement data or its dissemination. The Rule only provides that if a school chooses to make job and earnings claims it must be able to substantiate those claims by recourse to track-record data about its own students.[126] Each school is free to select the advertising approach most amenable to its method of doing business, whatever its cost might be.

With this caveat in mind, we turn to the evidence on the record which bears on the question of data-costs. During the course of this proceeding several experts in survey techniques and student-follow up testified as to their present experiences in obtaining data from school graduates. Each of them was presently operating a program or firm whose sole purpose was to conduct the type of student follow-up that industry members argued was impossible or infeasible. They were unanimous in their judgment--whether they supported the proposed Rule in whole or in part on other grounds--that the collection of placement data was not only feasible, but inexpensive.[127] These experts estimated that follow-up costs would run approximately $2 per graduate, with the marginal cost per student diminishing as the size of the survey group increased.[128]

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[123] See testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9476. For example, only 11 students out of 1,760 respondents refused to give salary data. Moreover, the researcher never did any follow-up for refusals.

[124] See testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9514.

[125] See, e.g., comments of NHSC, Exhibit K-439, p. 100; testimony of J. Brennan, school owner, Tr. 599; and testimony of J. Griffin, President, Massachusetts Association of Private Schools, Tr. 556.

[126] See Part II, Sections III and IV-C, infra.

The low cost of these follow-up efforts is best seen in a concrete example. Assume a course with a 100 graduates, and 100 drop-outs, with about 50 percent of the graduates getting jobs related to their course within four months of graduation. The students are prepared in advance to receive a follow-up questionnaire, and two mailings are sent out. This should cost

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[127] See testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9440; testimony of J. Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9514; testimony of Dr. W.D. Griffith, Research Specialist, Fairfax County Public Schools, Tr. 2642; testimony of J. Wich, Associate Professor of Marketing, University of Oregon, Tr. 4210; materials from Dr. K. Hoyt, Professor of Education, University of Maryland, Exhibit C-71.

[128] One researcher, who has been doing follow-up studies of public and proprietary vocational school students for a number of years, estimates that using efficiencies of scale, the cost could be less than $3 per graduate initially and less than $2 per graduate once the system is set up. Testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9444.

Another individual whose occupation is following up graduates of vocational schools put a cost of $2 per student for the organization, collecting data both at enrollment and at four separate times after graduation. In addition, the individual would provide thousands of copies of reports and several training sessions; but this is utilizing economies of scale. For a small institution, this researcher made the following estimates:

> The System is available today for any private school to utilize when seeking self-study and/or product accountability, of the institution and the programs.
>
> The price of implementing the follow-up portion of the system is calculated based on two elements: Mailing is made to each former student at a designated time and subsequent scheduled mailings follow until the student responds or until the mailing

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128 (Continued)

> schedule is complete. When the student responds, the information is scanned and filed on magnetic tape. After all the mailings have been completed and the responses in the file, two summary reports of the data are prepared for the school. Also, any address changes are noted so that the school has a current alumni file available. If we are to do this for a school with fewer than 1,000 students scheduled to receive the mailing, the price is $.65 per student mailing, including postage. The price per student responding is $1.50 including postage. If the school has more than 1,000 students, the price per student mailing is $.40 and the price for processing per student response is $1.10. Using the example of a school with 30 students in a program due for follow-up, I have come up with a price of approximately $80.00 to make the necessary mailings to those students, process the results based on 70 percent response, produce two summary reports of that data for the school. As you can see, in the industry where the cost to enroll a student ranges anywhere from $100 to $300 per student, this cost to secure evidence of the quality of the product is very, very minimal.

Letter from J.G. Ashman, Director, Action Research Service, National Computer Systems, Minneapolis, Minnesota to Jon Sheldon, F.T.C. (November 11, 1974), with "Summary Report of the Post-Secondary Occupational Education Information and Accountability System, North Dakota, 1974-75", Exhibit C-141; testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9512; testimony of Dr. William D. Griffith, Research Specialist, Fairfax County Public Schools, Tr. 2642; testimony of Darryl Laramore, Supervisor of Vocational Guidance, Montgomery County Schools, Maryland, Tr. 2960.

Several other individuals and exhibits point to the fact that follow-up surveys can cost as little as a few dollars an individual. _See op. cit._, Tr. 9510-13.

about $2 per graduate, or $200. Considering the short four-month follow-up, one could expect about 70 replies, 25 non-respondents and five unreachables.[129] Based on the testimony of the experts cited above, one could anticipate that telephone follow-up at an estimated cost of $75 should eliminate virtually all 25 non-respondents. Assuming 48 out of the 95 respondents obtained related jobs, the school could then stop at this point and report that 48 percent of all graduates were placed, or follow-up on the remaining five to try to boost the rate to about 50 percent. If it stopped, the cost would be about $2.75 a graduate, or about $1.40 an enrollee.[130] Even if the school spent as much as $20 each trying to trace down the five unreachables, the total cost would be only $3.75 a graduate or $1.90 an enrollee.

These cost estimates are predicated upon the assumption that the school in question has never before attempted to collect placement data. If such efforts had been made, further savings would result. The record shows that many schools presently are making efforts to obtain follow-up data.

These efforts derive from a variety of sources and motivations. First, many schools already have placement services where the school automatically learns about the placement and salary success or lack of success of its graduates. All AICS schools are required to offer placement services.[131] Virtually all NATTS schools also offer placement services.[132] In

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[129] See footnote 63, and text at footnotes 111-114 supra.

[130] For a course with a 10 percent graduation rate, as some large home-study courses have, this cost would be down to 28 cents an enrollee. Compare this with the tuition of many courses of over $1,000. See Part I, Section II-B(4), supra.

[131] AICS Accrediting Materials, Exhibit F-2.

[132] One study of 41 NATTS schools found placement services was one of the major resource commitments.

> Four of our questions (1, 4, 6, and 12) give an indication of how important job placement is to a proprietary school. Eighteen of the forty-one schools have a staff person assigned full time to placement with additional people assigned part time to placement. Ten schools have the equivalent of a person working from almost full time to half time on placement and thirteen schools have the equivalent of one person working less than half time on placement. Ten schools were explicit that their instructors give some of their time to placement; on the basis of our visits to

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schools and conversations with school people we think that if we had specifically asked "Do instructors participate in placement" that considerably more than half of the schools would have responded "Yes." Given the small size of most proprietary schools and their staffs, the percentage of total staff time given to placement is considerable--as high as 25 percent in many instances.

Some partial explanation for this major expenditure of staff time is the large number of employers with whom a proprietary school placement service will have regular contact. Almost half (twenty) of the responding schools deal regularly with 100 or more employers (#12). The rest of the schools have contact with an average of about fifty employers. As one school owner said at the NATTS Conference, the more employers placement directors are on a first-name basis with the more jobs for the graduates of their schools.

Every school (#4) said that there was no limit on the length of time a graduate could call upon the services of the school for placement help. The most frequent reply was this is a "lifetime" service.

A further indication of the central role of job placement was the fact that thirty-four of the forty-one schools include as a regular part of their curriculum a component dealing with career preparation or job orientation. "Our placement procedure must start the first day of class not the last," as one owner said. And from another: "We have recently introduced a job orientation unit during the first week of our training program."

Some Aspects of Placement in Proprietary Schools: Its Importance and How Schools Do It, Center for the Study of Consumer Financed Education, Inc., Washington, D.C., received by S. Newburg-Rinn, Federal Trade Commission, Washington, D.C., from J. Lamet, Federal Trade Commission Chicago Regional Office (February 4, 1974), Exhibit C-60; Accreditation: Purposes, Procedures and Standards, Cosmetology Accrediting Commission (June 1970), Exhibit F-6.

addition, numerous other schools advertise that they also offer placement services.[133] Of course some schools, most notably correspondence schools, do not offer placement assistance. In addition, schools that do offer placement services find many students not using such assistance. Nevertheless, a school that offers a placement service will find it significantly less costly to do any additional follow-up of its graduates.

Second, federal and state laws require many schools to obtain and report follow-up information on their students. The Veterans Administration requires follow-up surveys for graduates for each course before a school can become eligible for veterans' benefits.[134] At last count there were about 5,000 proprietary vocational schools eligible for veterans' benefits, all of which are now required by law to conduct follow-up surveys if they wish to remain in the veterans' benefits program.[135]

All schools utilizing Federal Insured Student Loans must also now make placement disclosures regarding their graduating classes.[136] While there is some uncertainty as to what type of disclosures will be made, it seems clear that schools will be making some kind of effort to follow up students if they are participating in this program. In addition, a number of states are now requiring placement data from schools operating in or enrolling students within their boundaries. These states include Indiana, Minnesota, Massachusetts, Illinois, and Wisconsin.[137]

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[133] _See_ Part I, Section IV-B(1), _supra_.

[134] The VA allows schools to survey a sample of 300 non-military graduates for each course. This is for each _course_, not for each _school_. Not many residence schools have more than 300 graduates in a course and not many of even the large correspondence schools graduate 300 a year per course. _See_ Part I, Section II-B(3), _supra_. For example, LaSalle Extension University, one of the largest correspondence schools experienced no significant savings, if any, from sampling in half of their courses because the total number of graduates was at or less than 300. _See_ attachment to statement of Robert Barton and Frederick Greenman, LaSalle Extension University, Chicago, Illinois, Exhibit D, at Exhibit L-112. In fact, Cleveland Institute of Electronics, another major correspondence school, surveyed all of its graduates, not using a sample at all. Attachment to statement of Gerald O. Allen, President, Cleveland Institute of Electronics, Exhibit #1, at Exhibit L-119.

[135] _See_ Part I, Section VIII-C(1), _infra_.

[136] _See_ Part I, Section VIII-C(2), _infra_.

Finally, some accrediting associations also require placement rates. All National Association of Trade and Technical School members report statistics in their accrediting reports.[138] The Association of Independent Colleges and Schools' members also report placement data.[139] While National Home Study Council schools do not, a number of its major members submitted student follow-up surveys to the public record in this proceeding, some derived from the VA requirements.[140] An F.T.C. survey of a random sample of unaccredited proprietary vocational schools found many schools quoting statistics as to how many of their students obtain related employment.[141] An information request from the VA (not related to the recent 50 percent placement requirement) also found most schools providing information about the number of students placed.[142]

Therefore, the record not only shows that placement follow-up information is readily available and cheaply obtained but also that the requirements of the Rule would only supplement existing efforts undertaken by schools by virtue of other federal, state, and private regulations.

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[137] See Part I, Section VIII-B(1), infra. See also "1974 Accreditation Renewals," by Marian Cline, Staff Specialist for Licensing Procedures, Indiana Private School Accrediting Commission, Exhibit C-232.

[138] Self-Evaluation Reports, Visiting Team Reports, and File Review Letters. Material subpoenaed on August 14, 1974, National Association of Trade and Technical Schools, Exhibit F-61.

[139] Photocopied portions of Self-Evaluation Reports, Examiner's Reports and Examiner's Summary Reports of member schools, AICS, Exhibit C-37.

[140] Self-Evaluation Reports and Chairman's letters, material subpoenaed on August 14, 1974, National Home Study Council, Exhibit F-64.

[141] Unaccredited Proprietary Vocational Schools' Response to Information Request, Exhibit C-200.

[142] Compliance Report of Proprietary Institutions Apprenticeship Programs, and On-the-Job Training Programs, VA Form 09-4274 (Los Angeles, Chicago, and New York), Exhibit C-245.

VIII. Existing Regulatory Patterns

A. Introduction

The Commission has exerted considerable efforts to provide remedial relief to consumers of vocational school services. These efforts supplement the activity of other agencies and groups which also have direct and indirect responsibility for supervising the acts and pratices of proprietary schools. In this section of the Report a detailed summary will be provided of the responsibilities, efforts, and effectiveness of these other agencies. Although the number of entities that have a regulatory responsibility in this field seems large, we have concluded, based upon the evidence in the record, that oversight of proprietary schools' business and marketing practices is inadequate, confusing, contradictory and often inept.

Because the nature of the discussion of the various issues raised by the Rule has compelled us to spread the explanation of existing regulations over many areas, it is appropriate that we briefly summarize the existing regulatory framework in one place. A clear understanding of the nature of extant regulations and regulatory schemes is necessary to the Commission's deliberations on the proposed Rule and essential to evaluating the need for action at the federal level by the Commission.

B. State Regulation

State regulation of proprietary vocational schools takes a variety of forms: school approval agencies, licensing of salespeople, and law enforcement prosecutions under consumer protection or other statutes by state attorneys general or other agencies. The effectiveness and form of this regulation vary from state to state. This section will describe the regulatory framework to see in particular how it deals with the consumer protection issues raised by this rulemaking proceeding.

The section will find that:

1) state laws and regulations are often inadequate to deal with unfair and deceptive practices analyzed above;[1]

2) the laws that are on the books are not effectively enforced, both because of insufficient resources committed to enforcing existing statutes and, at times, because regulatory officials seem more concerned with protecting the schools than their students; and

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[1] See Part I, Sections IV and V, supra.

3) individual state regulation--no matter how adequate-has difficulty dealing with out-of-state schools that enroll in-state students.

1. State Laws and Regulations

Four states have not enacted any vocational school licensing statute.[2] Typically, the licensing laws of those states that have passed vocational school statutes cover such areas as the school's curriculum,[3] corporate organizational and financial standards,[4] or the bonding of schools in the case of default on contractual obligations.[5] Twenty-nine states require salesagents to be bonded.[6]

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[2] Iowa, Missouri, Utah, and Vermont. State Laws, Rules and Regulations Affecting Proprietary Vocational Schools and Their Salespeople (filed alphabetically by state), Exhibit G-1.

[3] Arizona, Florida, Kentucky, Nebraska, North Dakota, and Washington have no such requirements. Op. cit., Exhibit G-1.

[4] Alaska, Arkansas, Georgia, Idaho, Louisiana, Maryland, Mississippi, and West Virginia have no such requirements.

[5] The bond requirements, ranging from $1,000 (in Arkansas and Maine) to $25,000 (in Delaware, Indiana, Massachusetts, Texas, and Wisconsin), are intended to provide a modicum of protection for students' investments when schools close their doors due to bankruptcy or financial malfeasance. According to a survey by the National Association of State Administrators and Supervisors of Private Schools, 37 states have some form of bond requirement. "Summary of Survey of Proprietary School Bonding in the United States" (January 28, 1976), Exhibit L-83.

[6] Memorandum from Joseph A. Clark, President, National Association of State Administrators of Private Schools, re: Brief Study Related to State Regulations of Private Schools (Postsecondary), Exhibit L-83.

There is some evidence that the statutory bonding requirements do not fulfill their intended purpose of protecting the public from failed schools and unscrupulous salespeople. The minimal dollar amounts of bonds are frequently insufficient to cover the losses suffered by large numbers of students when schools close. Ronald S. Pugsley, Chief of the U.S. Office of Education's Accreditation Policy unit, testifying at a Wisconsin Educational Approval Board hearing, issued the following warning about reliance on bonding requirements:

> Regarding the bonding of schools and solicitors, we cite a cautionary note to avoid being misled

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Relatively few of the states' licensing laws contain consumer protection provisions, but principally concern themselves with such matters as curriculum and financing.[7] One area of regulation with consumer protection implications is the licensing of salesperson just files with the state agency an application containing name, address, employment background, and personal references. The minimal information required for issuance of a solicitor's license provides the state agencies charged with regulating salespeople with little opportunity of screening applicants or of apprehending those who subsequently violate the laws.[8]

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[6] (continued)

> by any delusive exactness or chimercial [*sic*] security presumably provided by bond requirements. There definitely exists a need for assurances as to institutional continuity and viability; however, in the event of major school disruptions or closures, at current tuition rates the total surety required by section 2.07 [of proposed Wisconsin regulations] would recompense only a small fraction of the student body.

Statement before the Wisconsin Educational Approval Board, (September 13, 1972), Exhibit G-49.

The California Postsecondary Education Commission found in its survey of 16 states that surety bond requirements are a relatively ineffective means of immunizing students from the effects of tuition losses due to school closures. The Commission concluded that "(m)ost bonding arrangements would be inadequate to provide full restitution to all students unless the school were extremely small." *The Role of the State in Private Post-Secondary Education: Recommendations for Change* (July 1976), pp. 89-92.

Further, numerous complaint letters on the public record in this proceeding are from students who received no reimbursement of lost tuition when their schools closed, or when they were deceived by sales agents in states with bonding requirements. Student complaint letters, Exhibit J-1.

[7] *See op. cit.*, Exhibit G-1.

[8] The testimony of two former salespeople at the hearings on the proposed Rule exemplify the laxity of licensing requirements. When asked if he thought licensing was an effective means of protecting the consumer from unethical salespeople, one former representative of several schools replied, "No. The stupid questions they ask you for when you go in for the license, any idiot can answer them." He was then questioned as to whether
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Since obtaining a solicitor's license is frequently considered little more than a formality by both the state agencies and the vocational school industry, some schools ignore the licensing requirement altogether. When three Chicago Tribune reporters posed as applicants for sales jobs at LaSalle Extension University they were "advanced to the front lines immediately, with neither permits nor background checks."[9] The Tribune article explained that:

> Since it takes up to three week to process such permits and obtain identification cards . . . some schools push salesmen onto the street, peddling education like aluminum siding without bothering to obtain the legal documents.[10]

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8 (continued)

there were any grounds for rejecting a license application, and he said that "The sales manager of Weaver [Airline Personnel School] told me when I applied for my first license that if I failed I'd be the first person that ever had." Testimony of Warren Randolph, ex-salesperson, ITT, Weaver, Lafayette Academy, Tr. 471. Another veteran solicitor for several schools gave his opinion of licensure:

> I think state regulation agencies...fell short in approving...I don't think my application in the State of Maryland should have been approved as a salesman. Secondly, at the time that I was given the proprietary school license I think the state education department there should have looked much closer at me or the organization that I was representing... I think they sort of fell short there.

See also testimony of Meyer Cohen, Tr. 2223, testimony of Leonard L. Sanders, President, Better Business Bureau of Eastern Massachusetts, President, Consumer Affairs Foundation, Tr. 223-24.

[9] "Regulation of Career Schools Usually Too Little, Too Late," Chicago Tribune (June 12, 1975), Exhibit D-284.

[10] Id. See also Boston Globe, Exhibit D-1. Globe reporters were solicited by salespeople for three large accredited schools, none of which had been licensed by Massachusetts.

Another form of regulation relevant to this proceeding is state requirements concerning school's minimum refund standards. As an earlier section has described in detail, state refund policies are often as or more restrictive than private accrediting association standards--standards which themselves are far tougher than a pro rata refund.[11]

Staff found no states that mandated placement disclosures. Two states do require such disclosure if schools offer or advertise placement services,[12] but no state mandates drop-out disclosures. A number of states require schools to disclose placement and drop-out information to the state approval agency but not to students.[13]

While most states provide students with only a three-day cooling-off period or none at all, some statutes provide the consumer with a longer period to reconsider the purchase decision.[14]

A number of states impose restrictions on advertising, but none of these are particularly far-reaching. Most common are prohibitions of help-wanted advertising,[15] explicit job or salary guarantees,[16] or misrepresentations about jobs or earnings. Since the statutory proscriptions on misrepresentations usually do not define or enumerate what constitutes a misrepresentation, such provisions are virtually unenforceable.[17] A few states do prohibit earnings representations or require extensive accompanying substantiation and disclosures.[18] But similar restrictions on employment representations are not found.[19]

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[11] See Part I, Section VI-B(1), supra.

[12] Illinois and Minnesota.

[13] See, e.g., Illinois, Minnesota, Massachusetts, Indiana, Ohio, and Wisconsin.

[14] Illinois provides students with a six day cooling-off period. Exhibit G-1. Wisconsin allows students to cancel until three business days after acceptance, not application. In addition, Wisconsin imposes, beyond the registration fee, virtually no added cost to a student if the individual drops out after the first week of classes. Minnesota has a five day cooling-off period. Exhibit G-1.

[15] Texas, Colorado, Tennessee, Arkansas, Oregon, Rhode Island, Ohio, Pennsylvania, Illinois, Indiana, Florida, Wisconsin.

[16] Texas, Colorado, Tennesee, Oregon, Rhode Island, Ohio, Pennsylvania, Florida.

[17] Texas, Tennessee, Arkansas, Ohio, Illinois, Indiana, Wisconsin.

Thus it can be seen that, with the exception of a few states, most vocational school legislation is not geared to preventing consumer protection abuses. State officials and others who testified at the hearings on the proposed Rule pointed to deficiencies in the laws themselves as one cause of widespread problms in the vocational school industry. Witnesses familiar with the California law governing proprietary schools, for example, stated that its inherent weaknesses were the source of some of the vocational school abuses in that state. Herschel T. Elkins, California's Deputy Attorney General, testified that "[O]ne of the great difficulties is that the California law is so poor. It does not cover a lot of the areas that it should... ."[20] Another witness who participated in a one-year study of proprietary school regulation in California said that:

> The conclusion the report came to...was that the conditions under which a non-public post-secondary institution may come into existence do not provide the safeguards needed to assure a quality educational enterprise and do not provide adequate consumer protection to the citizens of the state.[21]

In some states, similar difficulties may arise from the way in which the regulations designed to carry out the statutory mandates are written. A Chicago Tribune task force investigating Illinois vocational schools found that:

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[18] Illinois, Texas and Rhode Island do not allow quoting of dollar amounts as indicative of earning potential. Wisconsin requires salary representations in advertising to be average figures. The school must also disclose in the advertisement both the method of calculation of this figure and the fact that it does not guarantee that student will earn such an income.

[19] Wisconsin requires affirmative disclosure in accounting and law course advertisements that completion of those courses will not entitle the student to take the Wisconsin CPA or Bar Exams.

[20] Testimony of Herschel T. Elkins, Tr. 5146.

[21] Testimony of Dr. Owen Albert Knorr, Director of Planning, University of Nevada, Las Vegas, Nevada, Tr. 4012. See also testimony of E. Gold, Kings County District Attorneys Office, Tr. 1324, who testified that New York's statutes and regulations are also inadequate and are difficult to enforce.

> Rules and regulations governing operations of Illinois schools are not only inadequately enforced but also John D. Keller, who wrote them during the [Illinois Superintendent of Education, Michael J.] Bakalis administration, conceded...[they] are probably unconstitutional and unenforceable anyway because of conflicts with statutes and vague language."[22]

2. State Enforcement of Existing Regulations

In addition to the deficiencies inherent in the state laws themselves, the lack of enforcement of those statutory protections which do exist contributes further to the failure of effective state regulation of consumer protection abuses. State agencies responsible for regulating vocational schools are either unable, or, in some cases, apparently unwilling to effectively control the industry.

Even the former President of the National Association of State Administrators and Supervisors of Private Schools--those ultimately responsible for administering and enforcing the state laws--has conceded that his colleagues are not uniformly successful in fulfilling their mandates: "I must admit that all of the states were not competent or capable to provide consistent and rigid oversight necessary to eradicate problems found within the proprietary sector."[23]

Others have gone even further and stated that the licensing of schools was a meaningless exercise insofar as consumer protection was concerned. A former New York City Department of Consumer affairs attorney stated at the hearings, "I don't think anybody has been doing the job. I think licensing in New York State has proven to be a joke."[24] The President of the Greater Boston Guidance Club had a similar opinion of the effectiveness of licensing in his state: "It isn't working, I don't think. I don't think we have any state regulations that are working... . There is no control at all... . They are just licensing schools."[25] The Executive Secretary of the Massachusetts Consumer Council agreed:

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[22] "Regulation of Career Schools Usually Too Little, Too Late," Chicago Tribune (June 12, 1975) Exhibit D-284. The Boston Globe, in its expose of proprietary school abuses in New England, reached similar conclusions about the adequacy of state laws and regulations. See Exhibit D-1.

[23] Testimony of Joseph A. Clark, Commissioner, Indiana Private School Accrediting Commission, Tr. 6372.

[24] Testimony of P. Gasell, former Staff Attorney, New York City Department of Consumer Affairs, Tr. 1347.

[25] Testimony of J. Walsh, Tr. 513.

> I think there's been a failure of regulation in the Commonwealth of Massachusetts, both by the regulatory body--the Department of Education, and by our law enforcement agencies. And until the [Boston] Globe took an interest in the situation, there was no enforcement of existing law.[26]

Only recently the California Postsecondary Education Commission adopted a staff report that found that the State Department of Education had failed to aggressively administer state laws that apply to private vocational schools and failed to protect students from unscrupulous schools. The Commission recommends that the Department of Education be stripped of its responsibility in this area with the creation of a new board.[27]

One measure of the aggressiveness of state regulation is the number of times a state agency revokes a school's license since this is the primary means available to state regulatory agencies to enforce compliance with state laws. A survey conducted for a Brookings Institute report revealed that in 1973 only 67 licenses were revoked in all 50 states and the District of Columbia, out of a total of 7,629 licensed schools.[28]

The Commissioner of the New York City Department of Consumer Affairs testified:

> Despite widespread and frequently wide known abusive vocational school practices, the Department of Education had revoked only one vocational school license in the past 40 years. And that revocation came only as a result of pressure from the New York City Department of Consumer Affairs... .[29]

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[26] Testimony of Paul Gitlin, Tr. 300. See also testimony of Ken McEldowney, San Francisco Consumer Action, Tr. 4674-75.

[27] California Postsecondary Education Commission, The Role of the State in Private Postsecondary Education: Recommendations for Change (July 1976).

[28] Harold Orlans, et al., Private Accredition and Public Eligibility, Vol. 2 (October 1974), Exhibit D-21. The figures cited are estimates, because not all of the state respondents to the survey were able to provide precise tallies.

[29] Testimony of E. Guggenheimer, Tr. 938.

An attorney formerly with the New York City Department of Consumer Affairs described the reluctance with which even that one revocation action was taken:

> I think it's fair to say when the Department of Education was first confronted with this evidence, they didn't want to see the evidence. It really wasn't interested. Even in the face of the overwhelming evidence, it took months for the Department of Consumer Affairs to prevail upon the Department of Education to act at all. They had no idea about how to crank up the machinery for a hearing....[we] had to...literally guide the Department of Education through each step of the proceedings.[30]

State officials also indicated in their testimony a reluctance to revoke licenses or withhold the issuance of permits as an enforcement mechanism.[31]

The state regulatory agencies' lack of responsiveness to student complaints is another indication of the failure of state enforcement mechanisms in the vocational school area. The letters from students on the record,[32] the testimony of numerous witnesses,[33] and other evidence[34] point to the widespread ineffectiveness of existing consumer complaint mechanisims. Most states have no clearly defined lines of responsibility for handling or following up on student complaints, so that many complaints are lost in the bureaucratic maze and are never resolved. Several state officials testified that no agency in their state would accept ultimate responsibility for resolving complaints, so that letters from disgruntled students are forwarded from one office to another until they are lost or the student loses hope and stops complaining. Some states follow the U.S. Office of Education's procedure of forwarding complaints to the appropriate private accrediting association, with no follow-up mechanism to ascertain whether the problems are satisfactorily resolved. The almost universally deaf ear which is turned to the student who does complain may explain why relatively few of those who experience problems with their schools report them to the officials who are nominally in charge of protecting the public against vocational school abuses.

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[30] Testimony of Peter Gasell, Tr. 1345.

[31] See, e.g., testimony of Robert Siler, Director, Veterans' Education and Training, West Virginia Department of Education, Tr. 2245: testimony Joseph A. Clark, President, NASASPS and Commissioner, Indiana Private School Accrediting Commission, Tr. 6411; testimony of Harold A. Shoberg, Executive Director, Arizona Board of Private, Technical and Business Schools, Tr. 3359-60; testimony of James Manning, Supervisor, Proprietary Virginia Board of Education, Tr. 2374. See also, Boston Globe, which found that Massachusetts had never revoked a school's or salesperson's license, despite evidence of widespread vocational school abuses in the state, Exhibit D-1.

[32] Student complaint letters, Exhibit J-1.

One reason for the lack of enforcement of state laws is the inadequate staffing of the agencies charged with regulating the schools. Several of the responsible state officials who appeared at the hearings lamented the fact that their skeletal staffs enabled them to perform only token monitoring functions. The Associate Commissioner of Massachusetts' Division of Occupational Education described one of the causes of the problem:

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[33] Testimony of K. McEldowney, Consumer Action, San Francisco, California, Tr. 4672-4679; testimony of K. Tomovick, Consumer Action, San Francisco, California, Tr. 4570; testimony of W. Kelly, former salesperson, Tr. 3445; testimony of S. Soehnel, attorney, San Mateo Legal Aid, California, Tr. 3997; testimony of B. Berwald, attorney, San Mateo Legal Aid, California, Tr. 3871; testimony of O.D. Russell, Associate Superintendent of Public Instruction, California, Tr. 4305; testimony of D. Woodward, California Deputy Attorney Genral, Division of Consumer Fraud, Tr. 4323-4334; testimony of J. Hendrickson, attorney, Tr. 8700; testimony of J. Platt, Consumer Representative for Students, Tr. 8965; testimony of P. Hynes, Chief, Consumer Fraud Unit, U.S. Attorney's Office, Southern District of New York, Tr. 1744.

[34] See, e.g., California Postsecondary Education Commission, The Role of the State in Private Postsecondary Education: Recommendations for Change (July 1976), pp. 47, 49-50, 98-99; Boston Globe, Exhibit D-1.

> One of the greatest contributors to the problem from the state agency point of view, was what might be termed 'the licensing syndrome'--the belief that, if one licensed a school and visited it once or twice a year, the consumer would somehow be protected. This, in turn, means that state agency staffs became almost too small to perform even this minimal licensing procedure.[35]

The task of approving and monitoring hundreds of schools operating within a state overwhelms state agency administrators no matter how conscientiously they try to fulfill their mandate. Ohio's Assistant Attorney General testified that:

> [Ohio State Board of School and College Registration Executive Secretary Frank Albanese's] office is woefully understaffed and his best efforts are simply not enough, and ASI, for example, an agency which is charged with surveying the approximately 500 schools, both resident and correspondence which operate within the state of Ohio, consists of two individuals--Mr. Albanese and his secretary--and he occasionally hires part-time individuals to aid him... .[36]

Similarly, the Executive Director of the Arizona Board of Private, Technical and Business Schools testified that he alone performs the seemingly Herculean task of personally making two annual on-site inspections of that state's 109 licensed schools.[37] California's

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[35] Testimony of John Manning, Tr. 482.

[36] Testimony of Lewis Winarsky, Tr. 8549-50.

[37] Testimony of Harold A. Shoberg, Tr. 3357.

Bureau of School Approvals employs an 18-member staff to perform on-site inspections of 1,600 schools, to review 200 new school applications and 135 applications for additional courses each year.[38]

The effects of such manpower shortages are to limit state agencies to conducting cursory reviews of licensed schools, at the expense of meaningful enforcement activities. For example, the Assistant Director of Postsecondary Education in Illinois admits that "[Q]uite frankly, in evaluating courses, we many times know very little about the course itself."[39] One investigative team found that this staff of five people responsible for regulating 250 proprietary vocational schools could not begin to evaluate the information schools are required to submit to the agency concerning their instructors, courses, and placement.

> ...Overburdened state employees can do little but stuff the data in appropriate files and assume it is correct. Task Force checks determined that job placement statistics filed by many schools were false, misleading, or outdated.[40]

The then Illinois Office of Education chief explained that "budgetary restrictions" precluded adequate monitoring of the schools. Of his agency's $14 million budget, he allocated only $205,000 to proprietary schools which "were far down the line in my interest."[41]

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[38] Testimony of O. D. Russell, Associate State Superintendent of Public Instruction, Tr. 4307, 4315. For obvious reasons he elaborated: "I feel that the Bureau could use additional assistance...and the reason that we do not have additional assistance are budgetary reasons." Tr. 4318. *See also*, testimony of Dr. Thomas Bogetich, Executive Director, California Advisory Council on Vocational Education, Tr. 4040; and California Postsecondary Education Commission, *The Role of the State in Private Postsecondary Education: Recommendations for Change* (July 1976). In its survey of 16 other states, the Commission found that the state boards of Florida, Georgia, Louisiana, New Mexico, Oregon, Tennessee, and Texas, in addition to California, complained of inadequate budgets and staffs with which to enforce their vocational school regulations.

[39] "$30 Down Buys Mail-Order Lessons in Frustration," *Chicago Tribune*, (June 10, 1975), Exhibit D-284.

[40] "Regulation of Career Schools Usually Too Little, Too Late," *Chicago Tribune* (June 12, 1975), Exhibit D-284.

[41] *Id.*

Financial limitations also hinder the Wisconsin Educational Approval Board, according to its director:

> I would say that our own budget is barely adequate with respect to the responsibilities we are asked to carry out... . I know of at least one state where the person in charge of the state told me personally that there is nothing he can do because he has no budget.[42]

Similarly, the head of the California Bureau of School Approvals conceded that "We are so curtailed in funding that we can't do what we should be doing."[43] California's backlog of applications has enabled schools to obtain temporary permits--for which no inspection or review is required--and to operate indefinitely without any state supervision. Sometimes, as time for the actual review nears, the school just goes out of business, leaving its students high and dry.[44]

A similar lack of funds for manpower in state law enforcement agencies responsible for consumer protection often preclude them from filling the void left by the school licensing bureaus. A survey by the National Association of Attorneys General revealed that in many states the total fiscal year 1976 budget allocated for consumer protection activities was either nonexistent or minimal. Georgia and Tennessee had no budgeted funds for consumer protection functions; Oklahoma and Wyoming budgeted $12,000 and a majority of states had budgets of less than $200,000 for all consumer protection activities. Eight states had only one full-time attorney; twenty had between two and five attorneys; and only six states had ten or more assigned to full-time consumer protection functions. Since these meager budget and manpower resources must be spread over the entire spectrum of consumer protection functions, it is evident that the share available for remedying vocational school abuses is minimal.[45]

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[42] Testimony of David R. Stucki, Executive Secretary, Education Approval Board, Tr. 8515.

[43] "FTC Hearings in Fall Will Probe Vocational School Industry Abuses", Los Angeles Times (September 22, 1974), Exhibit D-292.

[44] Id. The article quotes a lawyer in the California Attorney General's office as saying, "Al Capone could start a school for gangsters and the state would have to let him do it" because of the long delays in issuing permanent licenses caused by understaffing at the state agency.

State consumer protection officials who appeared at the hearings on the proposed Rule described the serious effects such manpower and budgeting limits have on their ability to help victimized students. The Maryland Attorney General's Office testified that:

> Our Consumer Protection Division only consists of three attorneys full-time in addition to about eight or nine investigators. Under this we [have to enforce] all the consumer protection laws in the State of Maryland, the...rent control law and a number of other laws. The only time that we really can devote resources to vocational schools is in a situation...where people are just being defrauded of large amounts of money.[46]

In addition to the lack of enforcement of state laws attributable to the inadequate manpower and budgetary resources available to well-intentioned proprietary school regulations, there is some evidence that other state officials are not eager to intrude on the free-enterprise atmosphere enjoyed by much of the industry. Indeed, state regulatory officials often appear to view themselves as representatives of, and apologists for, the industry they are charged with regulating. At the hearings in this proceeding, some of the more resounding defenses of the proprietary school sector were heard from unabashed state officials.[47]

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[45] Memorandum from Christopher M. Wyne, Consumer Protection Coordinator, National Association of Attorneys General, re: State Programs for Consumer Protection Update, with tables (January 16, 1976).

[46] Testimony of Leslie Glick, Maryland Attorney General's Office, Tr. 3018. See also testimony of D. Cherot, Executive Director, Newark Office of Consumer Action, Tr. 1445.

One reason for the apparent friendliness of state regulators toward the industry they oversee is that they are often part of that industry. As Ida Hoos, a Research Sociologist, has observed:

> Very often, the persons serving on State Licensing Boards, as for example, of beauty operators, own and run the schools. This makes for a nice circularity, in that regulations serve the vested interests, abuses rarely receive proper attention, and one of the main channels for complaint is effectively blocked.[48]

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[47] *E.g.*, testimony of James Manning, Supervisor, Virginia Board of Education, Tr. 2374; testimony of Joseph Clark, Commissioner, Indiana Private School Accrediting Commission, Tr. 6368; testimony of R. Siler, Director, Veterans Education and Training, West Virginia Department of Education, Tr. 2245; testimony of I. Brody, Past President, Massachusetts Board of Registration of Hairdressers, Tr. 515; testimony of H. Shoberg Executive Director, Arizona Board of Private, Technical and Business Schools, Tr. 3350; *see* speech by G. R. Bowers, Ohio Assistant Superintendent of Instruction, before NASASPS Conference, Columbus, Ohio (November 14, 1973), p. 2, Exhibit G-31; letter from Joseph A. Clark to Lewis A. Engman (September 11, 1973), pp. 2-3, Exhibit G-30; Clark expressed similar sentiments in a letter to Harry H. Harper, Jr., Executive Editor, *Reader's Digest* (May 30, 1974), commenting on an article by Jean Carper ("Career Schools Aren't Always What They Claim", *Reader's Digest* (June, 1974)), Exhibit G-34.

[48] "Statement of Federal Trade Commission Proposed Regulation Rule for Proprietary Vocational Schools" (November 4, 1974), Exhibit A-70.

Another factor in the sometimes symbiotic relationship between the regulators and the regulated may be the alliance between the state proprietary school agencies and the industry's trade associations. Several states have placed such reliance on the proprietary schools associations' accrediting commissions that they exempt accredited schools from complying with the states' standards.[49] The three national trade associations take an active role in attempting to influence state legislators and regulatory boards to enact regulations which are favorable to the industry.

For example, the attorney for three of the industry accrediting associations has had a hand in the drafting of many state regulations. Typical of this role is the attorney's offer to Massachusetts officials:

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[49] See Part I, Section VI-B(1), supra. Kenneth Hatanpa, Minnesota Supervisor of Private Vocational Schools, criticized the reliance of state agencies on accrediting associations, in a letter concerning the Model Legislation developed by the Task Force of the Education Commission of the State:

> By containing what I term to be a "cop-out" provision, this model does little to encourage a state to assume the responsibility for regulating "accredited institutions". It provides instead that a state may recognize the accredited status of a school as evidence of compliance with state licensing or approval standards. I realize this is a "may" provision, but the mere fact that this is suggested, provides an inducement to already understaffed and underbudgeted state agencies to "hang their hats" on this provision. Experience in the state of Minnesota indicates there is no correlation between accreditation and compliance with Minnesota law. We, as does the Federal Trade Commission, find as many areas of non-compliance with accredited schools as we do with the non-accredited. (Letter to T. Pekras, Office of Illinois Superintendent of Public Instruction (January 30, 1974), Exhibit G-51).

> My services are available, without charge, to any state to help them write laws to regulate agents of out-of-state schools ...I again state that both Dr. Lockmiller [NHSC President] and I are available at no cost to the State of Massachusetts to help you revise and improve your present legislation.[50]

An extensive investigation of the proprietary school industry in Texas found that "[G]overnment at both the national and state level has been too prone to listen exclusively to the industry, while ignoring the complaints of the student."[51]

3. Interstate Problems

To further complicate state efforts at protecting proprietary vocational school consumers are problems raised by out-of-state schools. Out-of-state schools can be a major source of consumer injury. Virtually all correspondence schools--which enroll over a million students annually--are national in scope, as are many of the larger residential schools.[52]

The state where a school is located is most responsible for regulating its activities. Other states must rely on the effectiveness of that state's regulation. But schools can always shop around to locate themselves in states where supervision is most relaxed. In addition, some states might hesitate to vigorously protect out-of-state consumers if the result is the closing or moving to another state of an in-state school which is a major employer and taxpayer.

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[50] Letter from Bernard H. Ehrlich to John C. Kraskouskos, (January 12, 1967), Exhibit G-33. This same individual served as "legal counsel" to the education Commission of the States when it drew up a "model" proprietary school law. See Exhibit G-22.

[51] "Comment: The Proprietary Vocational School: The Need for Regulation in Texas", 49 Tex. L. Rev. 69 (December 1970), p. 114.

[52] See Part I, Section II-B(3), supra.

The head of one state approval board finds that:

> Schools located in states which have no private school law, which exempt certain kinds of schools, or which do not effectively enforce the laws they have, are creating an interstate concern of proportions which defies efforts by the states, acting individually, to control.[53]

For example, it would be too much to ask an understaffed Arizona state office to regularly visit and review a correspondence school in Illinois. Even if that agency did find the school's practices improper, it could do little about it. It could not close the school or stop it from advertising nationally. The only recourse it would have would be to revoke the school's sales agents' licenses to operate in that state. But the state may be reluctant to revoke licenses since licensure and bonding may be the only way even to begin to control these salespeople since lack of a license does not stop many sales agents.[54]

Another problem state regulators have mentioned is the case of fly-by-night operators who move from one jurisdiction to another faster than officials can bring them to justice in any one state. A Wisconsin Assistant Attorney General described this problem:

> ...it appears that many of these schools are set up in one state and then do not operate in the state they are set up in, but operate in other states. It creates an enforcement gap if you rely solely on the state to deal with this problem and I think also even if the states can deal with it, that the problem comes up too quickly for the state to respond and that by the time two states would get together to figure out what's going on, the school is out of business and lots of downpayments are lost ...The need for federal involvement is

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[53] Testimony of David Stucki, Executive Secretary, Wisconsin Educational Approval Board, Tr. 8509, 8503. See also testimony of Patricia M. Hynes, Chief, Consumer Fraud Unit, U. S. Attorney's Office for the Southern District of New York (December 6, 1974), Tr. 1732.

[54] See text at notes 8-10, supra.

> critical in respect to determining whether a certain school goes on its way out of business or not and to protect the public in general or the students in general with respect to it.[55]

Thus, the problems in the vocational school industry are not merely intrastate abuses which can be corrected through more effective enforcement of state laws and regulations. Even if the states were to replace their current regulatory frameworks with comprehensive, consumer protection-oriented statutes, and to begin vigorous enforcement efforts against the violators, the abuses committed by the many large, national schools would be difficult for the individual states to control. The business practices and sales techniques which currently injure consumers nationwide will continue to proliferate unless the schools are subject to federal regulation, since many interstate schools have demonstrated that they have the resources and flexibility to evade and circumvent the regulatory frameworks of the individual states.

C. Federal Involvement in the Proprietary School Field

During the course of these proceedings the staff has developed a substantial amount of information on the extent of federal involvement in the funding and regulation of proprietary vocational schools.

The size of the federal commitment in financial terms alone is startling. The National Commission on the Financing of Post Secondary Education (NCFPSE) determined that in 1972, federal subsidies to postsecondary schools for student financial aid amounted to almost $4 billion.[56] NCFPSE further noted that federal aid to postsecondary education for all forms of grants or loans exceed $9 billion in 1972.[57]

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[55] Testimony of Bruce A. Craig, Wisconsin Assistant Attorney General, Tr. 7055-7056. See also testimony of Leslie Glick, Office of the Maryland Attorney General, Tr. 3018. Harold Orlans testified that he had observed a similar problem:

> I don't think there is a permanent cure here . . . the thing goes in waves and those who want to break a regulation may either immediately move to another state in which it does not apply or find a way around it. There seems to be a wave effect in which the agency relaxes a bit, the state officials relax a bit and the mice come out of their holes again.

Testimony of Harold Orlans, Senior Research Assistant, National Academy of Public Administration Foundation, Tr. 2485-86.

It has become increasingly apparent that the availability of federal monies provides not only a high degree of direct and indirect subsidization to this industry, but also serves to enhance and perpetuate the deceptive practices described in an earlier part of this Report. In its report entitled Private Accreditation and Public Eligibility, the Brookings Institute indicated that:

> Direct and indirect federal financial support... has played a major role in the growth of the private vocational school industry with only the most minimal safeguards... . Thus, government itself has underwritten the development of school abuses and has a major responsibility to insure that the abuses of the industry are reformed.[58]

Federal involvement takes numerous programmatic forms that require the participation of several major governmental agencies. Because the dominant agencies in this field are the Department of Health, Education and Welfare and the Veterans' Administration, we will simplify the discussion by concentrating on programs which fall within their respective jurisdictions.[59]

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[56] Financing Postsecondary Education in the United States, NCFPSE (December 1973), p. 129, Exhibit H-30.

[57] Id., pp. 103-107.

[58] Brookings Institution and National Academy of Public Administration Foundation (October, 1974), p. 533, Exhibit D-21.

[59] However, this should not be construed to mean that other agencies do not have an active or substantial role in this field. Under the Vocational Rehabilitation Act of 1920, the Manpower Development and Training Act of 1962, and the Vocational Act of 1963, the federal government provides funds, generally on a matching basis, to subsidize the training of certain eligible persons as defined in those Acts. It is estimated that in fiscal year 1972, the government spent over $100 million under the Rehabilitation Act, $130 million under the Vocational Education Act, and $400 million under MDTA to train eligible persons at postsecondary institutions. See letter of January 15, 1975 from W. Kilberg, Solicitor of Labor, DOL, to C. Tobin, and attachments, Exhibit K-623.
(Continued)

59 (Continued)

Under the Social Security Act, survivors of eligible workers covered by Social Security are entitled to receive educational assistance allotments if they are full-time students under the age of 22. It is estimated that in 1972, the Social Security Trust Fund paid out over $680 million to beneficiaries to attend postsecondary schools. See Private Accreditation and Public Eligibility, Exhibit D-21 at 436-445.

The U.S. Department of Labor has responsibility for several vocational training programs. Under Title IV-C of the Social Security Act, DOL's Manpower Administration distributed over $30 million in 1974 and 1975 under the Work Incentive Program (WIN) for vocational training. Furthermore, under the Economic Opportunity Act and its successor, the Comprehensive Employment Training Act of 1973, DOL's Manpower Administration disbursed over $1.25 billion to prime sponsors (generally state and local governments) for vocational and employment-related training. Under CETA (Public Law 92-203), the prime sponsor selects the individual training facility to be used under the program. Although no data is presently available on the CETA program, DOL estimates that proprietary schools receive over one million dollars a year from CETA funds and that in some recent years it has exceeded $5 million. See letter of January 15, 1975 from W. J. Kilberg, Solicitor of Labor, to Charles A. Tobin, Secretary, F.T.C., Exhibit K-623. See also Evaluation of the MDTA Institutional Individual Referral Program, Olympus Research Corp. (June, 1972), Exhibit C-52, and A Comparative Study of MDTA Institutional Training in Community Colleges, Public Vocational Schools and Private Institutions, Harris Associates, Ltd. (May, 1973), Exhibit C-53.

In addition, the Department of Transportation's Federal Aviation Administration is also active in the proprietary schools field. Although some amount of student participation in flight schools is subsidized by the federally insured student loan program, the vast majority of federal funds come from the veterans benefits program. In fiscal year 1974, over $53 million was provided to veterans and servicemen to attend flight schools. See letter of December 5, 1974 from O. Vaughn, Chief Benefits Director, VA, to R. G. Badal, Attachment A, Exhibit H-149. See also Unaccredited Flight Schools Participating in FISL Program, Exhibit H-15.

The FAA has also established regulations standardizing curriculum, facility, equipment and related aspects of flight school and pilot certificates. See DOT, Advisory Circular Checklist and Status of Regulations 39 Fed. Reg. 13836 (April 17, 1974), Exhibit H-86; Pilot Schools, 39 Fed. Reg. 20146 (June 6, 1974), Exhibit H-86; testimony of J. Merinar, Chairman, Flight Training Committee, General Aviation Manufacturers Association, Tr. 2294;

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testimony of L. Burian, National Air Transportation Association, Tr. 2926; Advisory Circular, Pilot School Certification, AC No. 141-1, DOT, FAA, Exhibit H-186.

The Interior Department's Bureau of Indian Affairs (BIA) offers educational grants to American Indian students attending all types of postsecondary institutions. While there are no data available on the number of such students who attend proprietary vocational schools, the BIA expended over $20 million in 1973 on such grants. See Report of the Subcommittee on Educational Consumer Protection of the Federal Interagency Committee on Education, paper of the Bureau of Indian Affairs, Exhibit C-2.

The United States Postal Service also has a degree of involvement in this field. Under the applicable federal statutes, certain fraudulent activities by use of the mails fall within the jurisdiction of the Postal Service. The Postal Service has brought actions against both residential and correspondence vocational schools for misuse of the mails. See letter from W. Cotter, Chief Inspector, U.S. Postal Service, to J. Sheldon, and attached copies of mail fraud indictments, Exhibit D-110. However, these cases have proven to be few and far between and have proven not to be an effective deterent to false and deceptive practices. Testimony of P. Hynes, Chief, Consumer Fraud Unit, U.S. Attorney's Office, Southern District of New York, Tr. 1732.

Finally, the Immigration and Naturalization Service (INS) of the Department of Justice is responsible for approving the attendance of aliens at various educational institutions and responsible for issuing visas and entry permits for that purpose. It often finds that students are encouraged by schools to use the educational visa status as a means to enter the country without any actual intent to attend a school or institution. See Paper of the Immigration and Naturalization Service, FICE Report, Exhibit C-2. INS attempted to prevent this abuse of the immigration laws but has found that limited resources and confused statutory authority preclude active oversight of schools' educational and business practices, particularly since over 100,000 aliens attend schools on student visas each year. Testimony of G. Chester, Consumer Officer and Attorney, Division of Regulations and Legislation, Department of State, Tr. 2388; testimony of J. Ressig, Investigator, Immigration and Naturalization Service, Tr. 2550.

1. Veterans' Administration

Under Title 38 of the United States Code, the Congress has established a system for the subsidization of eligible veterans, servicemen, and their dependents to assist them in achieving their vocational or educational objectives.[60] In brief, the scheme established by Congress requires that the eligible veteran pursue a "program of education" at an "approved" institution. Having met these criteria, the veteran is entitled to receive a monthly assistance allowance if the individual attends a residential institution,[61] or to have 90 percent of the tuition paid if the veteran attends a home study school.[62]

By statute, a program of education pursued by a veteran who attends a proprietary vocational school must be "generally accepted as necessary to fulfill the requirements for the attainment of a predetermined and identified...vocational objective"--*i.e.*, avocational and recreational purposes do not qualify.[63] The VA's instructions in implementing the "generally accepted...for an identified vocational objective" language have been cryptic at best. At one point the VA merely stated that "a vocational or professional objective is an occupation."[64] Later, the instructions to the state approving agencies were somewhat more direct:

> PROGRAM OF EDUCATION - VOCATIONAL. We continue to receive complaints from veterans concerning some vocational courses. The complaints generally are centered around course content, quality of the course, the instructional materials, and the fact that completion of the course is not generally recognized by industry as meeting the vocational rquirements for the occupation for which the course purports to train the veteran. The State approving agency, in approving a course or in reviewing a course already approved, should be certain (a) that the curriculum is adequate to accomplish the training objective for which the course is

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[60] 38 U.S.C. Chapters 34, 35 and 36; *see* Veterans' Benefits under Current Educational Programs, Exhibit H-9.

[61] 38 U.S.C. 1682.

[62] U.S.C. Section 1786.

[63] 38 U.S.C. Section 1652(b); *see also* 38 C.F.R. Sections 21.4230(b) and 21.4252(b) (4).

[64] Correspondence Courses - Chapters 34 & 35, DVB/IB-20-73-1 (August 10, 1973), p. 1, Exhibit H-75.

> designed, (b) that the quality of the instructors assure competent and complete training for the vocational objective, and (c) that the course completion by itself is generally being accepted by the industry for employment purposes. For example, courses may have as their stated vocational objectives, insurance adjuster, motel-hotel manager, or computer programmer. A course leading to any one of these objectives, or any other vocational objective, should not be approved, or the approval continued unless the school can demonstrate that a substantial number of its graduates are thereby able to obtain employment in the occupations for which trained by the course.[65]

Finally, Congress amended the approval requirements of Title 38 to require that vocational courses must demonstrate that at least 50 percent of their graduates found jobs in positions for which they were trained.[66] The VA's implementing regulations have not been in existence long enough to ascertain whether the 50 percent placement requirement will be an effective mechanism of eliminating from the program those proprietary schools which are not capable of finding suitable employment for their graduates.[67]

However, we should note that even at its best, the VA's 50 percent placement requirement is not overly stringent. The amendments to Title 38 themselves allow the placement percentage to be computed based solely on graduates. This limitation is further restricted by the requirement that only those graduates who are available for placement be included within the final computation.[68] Moreover, schools are free to remove from the data any student who did not possess the requisite vocational intention, was on active duty, pregnant, changed marital status, was unwilling to move to a new locality, or who for other "valid" reasons was not included within the survey. Each school freely defines for itself what each of these exclusions should entail, and it is little wonder that the surveys have resulted in many schools eliminating the majority of their students from the final computations.[69] The 50 percent requirement is further weakened by the fact that schools are permitted to use samples in deriving their data and because schools are permitted to dictate who will count as a course related placement. This allows the school to include as "placed" persons who were already actively employed in their field when they enrolled.

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[65] DVB Circular 22-74-2 (March 27, 1974) p. 6, Exhibit H-39 (emphasis supplied).

[66] P.L. 93-508, amending 38 U.S.C. Sections 1673 and 1723(a) (2).

[67] DVB Circular 20-74-113, Appendix B (May 12, 1975), Exhibit H-205. It is interesting to note this progression in requirements for vocational school courses. The VA is now required to test the adequacy of a proprietary school's occupational courses by reference to the placement rate of the school--a position not philosophically far removed from a requirement that placement rates be disclosed.

[68] 38 U.S.C. Section 1673 (a)(2).

Having met the standard--as amorphous as it may be--that the program be "vocational" in nature, the school needs only to be "approved" in order to begin enrolling eligible veterans. Approval of vocational courses is deferred by law to state agencies, referred to as state approving agencies in the statute.[70] These agencies, which are reimbursed for their efforts by the Veterans' Administration,[71] are responsible for making the initial judgment on school approvals. The statute only establishes a minimum set of standards that each school must meet but otherwise allows the state agency to designate a course as approved:

> (1) when the school or course has been accredited by a nationally recognized accrediting agency or association; or

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[69] See, for example, the Comments of Bell & Howell Schools, Exhibit K-856; exhibits to accompany the testimony of G. Allen, Cleveland Institute of Electronics, Inc., Exhibit L-119; and exhibits to accompany the testimony of R. Barton, LaSalle Extension University, Exhibit L-112.

[70] 38 U.S.C. Chapter 36.

[71] In 1973, the VA provided state approving agencies with $10.6 million to cover the administrative costs of the approval process. See Final Report on Educational Assistance to Veterans: A Comparative Study of Three G.I. Bills, Educational Testing Service (1973), Exhibit A-4 at 272. The VA also gives proprietary schools three dollars for each veteran enrolled in order to defray the administrative expenses the school incurs in enrolling veterans. It is estimated that the VA contributed $3 million in "paper-work" fees to correspondence schools alone in 1972. Stars and Stripes (November 15, 1973), Exhibit A-3.

(2) if the school or course is not accredited, when the state approving agency has determined that the school or course has met certain criteria as to qualifications of staff, record keeping, adequacy of facilities, and refund policies.[72]

This statutory scheme's basic intent is to defer to the state agency as the primary source for the approval decision and leave the Veterans' Administration to override that decision only if and when a failure in the approval process is ascertained and verified. Indeed, the degree of deference shown to the state agencies and the extent to which the Veterans' Administration is hampered in its oversight functions is amply demonstrated by section 1782 of Title 38 which provides that:

> No department, agency, or officer of the United States, in carrying out [Chapter 36], shall exercise any supervision or control, whatsoever, over the State approving agency, or state educational agency, or any educational institution.

This approval system produced 6,660 approved vocational schools in 1973 of which approximately 5,000 were proprietary in nature.[73] Almost one million veterans attended these 6,600 schools and of these 430,000 attended correspondence schools.[74] The Veterans' Administration paid out approximately $600 million to these eligible verterans, $140 million for correspondence study alone.[75]

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[72] 38 U.S.C. Sections 1775, 1776.

[73] Final Report on Educational Assistance to Veterans, Exhibit A-4 at p. 272.

[74] Letter dated December 5, 1974, from J. Malone, VA, to R. Badal, FTC, and Attachments, Exhibit H-149, Attachment A. Figures are for fiscal year 1974. From 1966 through 1974, 5.3 million veterans used GI benefits to attend school, 1.1 million in correspondence schools. Training by Correspondence Under the GI Bill, Office of the Comptroller (June 1976), p. 3.

[75] Id., Exhibit H-149, Attachment A. Figures are for fiscal year 1974. A listing of the types of courses attended by veterans can be found in Correspondence Courses, DVB Information Bulletin, IB 20-73-11 (August 10, 1973), pp. 8-3, Exhibit H-75.

The impact of proprietary school participation in the veterans' benefits program is readily apparent from analyzing a few statistics. All twelve of the institutions with the largest enrollments of veterans are proprietary vocational schools, outranking several major colleges and universites.[76] Several large proprietary schools enroll tens of thousands of veterans in any given year, as the following figures for 1974 attest:[77]

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[76] *Final Report on Educational Assistance to Veterans: A Comparative Study of Three GI Bills*, ETS, 1973, Exhibit A-4 at 185.

[77] Letter dated December 5, 1974, from J. Malone, VA., to R. Badal, FTC, and attachments, Exhibit H-149, Attachment E. Since 1965, the VA has disbursed the preponderance of its funds to below-collegiate schools; Orlans, The Protection of Students at Proprietary Vocational Schools, statement before the House Committee on Government Operations (July, 1974), Exhibit H-90, document 4, pp. 3-4. See also testimony of J. Keller, counsel to United Systems, Tr. 3549, indicating that 65 percent of United's entire student body were veterans. This is not atypical. A brief review of accredited home study schools' veteran enrollments shows a substantial reliance on VA funds. Three large schools listed active VA enrollments of 60,942, 46,000, and 101,792. *See* submission of the NHSC or additional exhibits to the testimony of J. O. Brown, Exhibit L-131. The VA found that five large accredited home study schools--Bell & Howell, Advance Schools, Commercial Trades Institute (M-W Corp.), International Correspondence Schools, and LaSalle-enrolled 61 percent of all veterans in home study training. *See Training by Correspondence*, V.A., Office of the Comptroller (June 1976), p. 19.

Looking at it from a different perspective, the General Accounting Office found that the majority of veterans would not have enrolled at all in certain types of training if it were not for the availability of G.I. benefits. The GAO's statistics showed that 63 percent of veterans enrolled in vocational technical courses, 70 percent in flight schools, and 73 percent in correspondence schools would not have enrolled but for veterans' benefits. See GAO Report No. B-114859, *Veterans Responses to GAO Questionnaires on the Operation & Effect of VA Education Assistance Programs* (1976), p. 2.

Advance Schools, Inc.	60,181
Bell & Howell Schools	64,507
LaSalle Extension University	20,321
International Correspondence Schools	16,966
Cleveland Institute of Electronics	14,469
National Technical Schools	11,992
National Radio Institute	10,307

The availability of Title 38 funds for vocational training has had a profound impact not only on the growth of proprietary schools but on their solicitation practices as well.[78] Sections IV and V of Part I described in some detail the methods which proprietary schools have adopted in enrolling prospective students. As indicated there, the availability of federal funds--particularly monies that take the form of student entitlements--often reduces, if not eliminates, the consumer's normal caution in making large financial commitments. Salespeople and recruiters for proprietary schools have been quick to take advantage of this reduced sales resistance.[79]

The effects that veterans' benefits monies have on schools' enrollment practices goes beyond the mere sales tactics of individual recruiters. It has, at times, led to other objectionable forms of recruitment. For example, one firm established a business whose sole purpose was to assist proprietary schools in enrolling veterans. The firm guaranteed the enrollment of a minimum of 600 eligible veterans in a one-year period and would provide all recruiting, screening, and administrative functions for the contracting school. The fee was 15 percent of the total tuition paid by each veteran enrolled.[80] In another instance, a university entered into an agreement with a proprietary correspondence school. Course tuition was set sufficiently high to allow both the school and the university to recoup their normal tuition fees from the veterans' benefits allotments. All recruiting was to be accomplished by the school's existing commissioned salesmen. After nine months of operation, the program enrolled over 4,300 students, all but 20 of whom were veterans.[81]

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[78] Vietnam Era Veterans' Readjustment Assistance Act of 1974, *Report of the Committee on Veterans Affairs to Accompany S. 2784*, Report No. 93-907, June 10, 1974, p. 36, Exhibit No. H-77. Berry and Dunbar, "The Proprietary Vocational School: The Need for Regulation in Texas", 49 *Texas Law Review* 69, 16, Exhibit H-81.

[79] *See, e.g.*, testimony of W. Kelly, former salesperson, Jetma, ECPI, Famous Schools, Inc., Tr. 34326-29. A more extensive discussion of this phenomenon can be found in Part I, Section V, of this Report.

[80] *See*, Letter from R. J. Wientjes, Ohio State Approving Agency for Veterans' Training, to W. J. Brown, Ohio Attorney General (November 27, 1974) with correspondence proposal and contract of Programs, Inc. Veterans Procurement Company, Exhibit D-176.

Veterans' benefits monies also can have an effect on the way in which a school will structure its courses. Under current law, a veteran attending a residential school will receive a monthly payment as long as the veteran remains actively enrolled within the meaning of the statute.[82] For correspondence study, however, the VA will reimburse the veteran for 90 percent of the total tuition cost, whatever that cost might be.[83] This has led to a situation where some schools will divide their courses into correspondence and residential segments and attribute the largest part of the tuition cost to the correspondence portion.[84] Since the home study portion is marketed nationwide while the residential segment is only offered in a few specified locales, many students will complete the correspondence lessons quickly but never attend the most important part of the training at the residential facilities.[85] Yet the VA will pay for 90 percent of the correspondence portion in any case.

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[81] Larry Van Dyne, "A Partnership is Probed," Chronicle of Higher Education (October 21, 1974), Exhibit H-112.

[82] 38 U.S.C. Sections 1681, 1682. Recent amendments to Title 38 have raised the monthly allotment for veterans with no dependents to $250 for residential training. See Conference Report to Accompany H. R. 12628, Vietnam Era Veterans' Readjustment Assistance Act of 1974, Report No. 93-1107, Exhibit H-93.

[83] 38 U.S.C. Section 1786(a).

[84] See, e.g., "Truck Driver Training Schools...They're not all Crooked," Overdrive (June 1974), Exhibit D-38, where the tuition schedule for American Training Service is set out. See Part I, Section V, supra.

[85] See for example, "Coastway American Systems--How a Truck Driving School Promises, and Promises, and Promises and Promises...," Overdrive (August 1973), Exhibit D-37; interview reports with former students of Consolidated Systems, Inc., Transportation Systems, Inc., and Nationwide Systems, Inc., Exhibit D-47, and interview reports with, and letter from students of United Systems, Inc., (702-3182), Chicago F.T.C. R.O., Exhibit D-50; complaint letter from G. Brown to F.T.C. (November 1974), Exhibit E-152; letter from R. Manning, former

(Continued)

The availability of veterans' benefits funds fosters the growth of solicitation methods that often lead to false, deceptive, or unfair acts and practices.[86] The Veterans' Administration, through its surrogate state approving agencies, is not always in a position to provide remedial relief to consumers who are harmed by such practices. After reviewing the effectiveness of the Veterans Administration's supervision of proprietary schools, one study concluded that:

> From the data presented it is apparent that the function of the Veterans' Administration is in fact administrative and not evaluative ....[A]pproval of "accredited courses" is for the most part a formality. Criteria for "nonaccredited courses" pertain more to the administrative aspects of an institution than to the educational aspects.[87]

While the VA is not oblivious to either the problems in this industry[88] or the shortcomings of state approving agencies,[89] it oftens fails to or cannot act until it is given specific

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[85] (Continued)

salesperson for Universal Training Services, Inc. (September 5, 1973), Exhibit E-29; and advertisement, brochures and related materials from Diesel Drivers School, Inc., Exhibit E-74. See Part I, Section V, *supra*.

[86] "Correspondence Schools and the Military Market," *Stars and Stripes* (November 1973), Exhibit E-51; See Part I, Section V, *supra*.

[87] Ward, *The State of Accreditation and Evaluation of Post-Secondary Occupational Education in the United States*, Center for Occupational Education, North Carolina State University (1970), p. 140, Charles F. Ward, Perspective on Accreditation of Post-Secondary Occupational Education, Center for Occupational Education, N. Carolina State University at Raleigh (1970), Exhibit F-62; *see also* Statement of Bart O'Donnell, former Chief, Education Section, Veterans' Administration Boston (October 3, 1974), Exhibit H-171.

[88] *See, e.g.*, *Correspondence Courses - Chapters 34 and 35*, DVB/IB-20-73-1 (August 10, 1973), Veterans' Administration, Information Bulletin, DVB-20-73-1, September 10, 1973 "Correspondence Courses-Chapters 34 and 35 Title 38, US Code", Exhibit H-75.

[89] *Report of the Subcommittee on Educational Consumer Protection, of the Federal Interagency Committee on Education* (September 1973), reports 4 and 11, Exhibit C-2.

congressional direction to do so. The House Committee on Government Operations concluded in its report, Reducing Abuses in Proprietary Vocational Education, that:

> As a funding agency, the success of the Veterans' Administration's benefits division is measured popularly by the number of veterans availing themselves of educational benefits. Pressure to increase the number of beneficiaries is ever present and leads to an attitude that nothing should be done to close off the veteran's options... .
>
> Requirements for safeguarding the taxpayer's dollar spent for veterans benefits have generally been imposed from outside the Veterans' Administration.[90]

As long as reliance is placed on state agencies as the primary source for remedial relief of consumer abuses, the VA cannot insure that veterans' benefits funds are being appropriately spent. As discussed in greater detail in Section VIII B of this Part, local authorities are often unwilling or unable to play a viable consumer protection role. Not only do state approving agencies often lack funding and staffing, they also have no uniform set of standards available to ascertain either institutional quality or appropriate marketing practices.[91] As such, they suffer from the same failings as their licensing counterparts--the state education departments. Indeed, the state approval agency and the state licensing agency are often the same entity operating under the same set of guidelines with the same inadequacies.[92]

The inability of the state approving agency to cope with consumer protection abuses is a problem which the Veterans Administration and the state agencies share. It has long been recognized that state approving agencies lack the level of funding necessary to fulfill the functions assigned to them under the GI Bill.[93] In addition, since the VA itself is precluded by law from exercising any direct supervision over the approving agencies, the VA rarely provides direct and definite standards that the agencies must apply in declaring courses eligible for VA benefits.[94] This creates a situation of maximum flexibility for the state to choose the standards it prefers and the minimum uniformity and supervision.[95] As pointed out in the section of this Report describing state laws and state licensure programs, the preferences of many states lead to statutes that contain little, if any, protection for consumers confronted with false, deceptive and unfair business practices.

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[90] "Reducing Abuses in Proprietary Vocational Education," Twenty-seventh Report by the Committee on Government Operations, Report No. 93-1649 (1974), Exhibit H-168.

[91] Information Bulletin, Accreditation and Institutional Eligibility Staff, Bureau of Higher Education, USOE, HEW (September 1972), cited in Final Report on Educational Assistance to Veterans: A Comparative Study of three GI Bills, ETS (1973), Exhibit A-4 at 282. The Education Testing Service concurred in this evaluation of state standards.

[92] See Directory, National Association of State Approving Agencies (1973-1974), Exhibit G-3.

The lack of enforcement capability or responsibility at the state agency level is clearly expressed in statistics on the withdrawal of school approvals under the veterans' benefits program. Of the, 8,489 non-degree granting schools approved for veterans training in 1973,[96] only 255 incurred some form of revocation of their approved status.[97] Of these 255 revocations, the vast majority were for administrative reasons, not for reasons associated with business or marketing practices.[98] This dismal performance compelled one commentator to assess the efficacy of the state approval system in the following terms:

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[93] In 1956 the Report of the President's Commission on Veteran's Pensions (Bradley Commission Report) warned that the state approving agencies were not capable of fulfilling their duties under the veterans benefits program. See Educational Assistance to Veterans: A Comparative Study of Three G.I. Bills, Exhibit A-4 at 275-277.

[94] Id., pp. 278-283.

[95] Orlans, Private Accreditation and Public Eligibility, Brookings Institution (October 1974), pp. 356-358, Exhibit D-21.

[96] Non-degree granting schools include proprietary residential and correspondence vocational schools.

[97] Private Accreditation and Public Eligibility, p. 368-370, Exhibit D-21.

[98] Id. at p. 371. Typical grounds for revocation were: schools closed, mergers or sale, physical relocation, loss of veteran enrollments, and voluntary requests to have approval withdrawn.

> [T]he State Approving Agencies range widely in their enforcement powers, diligence, and capability. The result is a lack of control and also a lack of knowledge, of evaluation, of data, of assurance that veterans are getting fair value for their time and money.
>
> There is no way to determine whether the VA has insured that the money used to reimburse the State Approving Agencies was wisely and economically spent. Moreover, the VA warns students to check on schools, particularly vocational and trade schools, as to their refund policies and placement of graduates. The Federal Trade Commission issues similar warnings, and the U.S. Office of Education does not accept the approval of State Approving Agencies. In short, there remains more than a suspicion that the State Approving Agencies are not an effective means of insuring the quality of educational performance that is necessary to protect the veteran.[99]

Some attempts have recently been made to try to cure the most glaring administrative and consumer abuses of the veterans' benefits program. In late 1974, Congress passed P.L. 93-508 which would: (1) prohibit approval of courses whose advertising made significant use of avocational or recreational themes, (2) prohibit additional enrollment of veterans in any course where more than 85 percent of its student body was already receiving veterans benefits; (3) allow the Administrator, after a hearing, to deny approval to any school that used erroneous, deceptive, or misleading advertising, sales or enrollment practices; and (4) deny approval to any school that failed to place 50 percent of its graduates, who were available for placement in course-related positions.[100] As helpful as these amendments to Title 38 may be, they do not alter the basic structure of deference to state agencies as the decision-maker of first resort. Moreover, the primary thrust of these amendments is to insure that a quasi-adjudicative mechanism exists to eliminate the worst abusers of the program. They do not provide consumers with either independent rights or immediate remedies. As such, they do not address the same types of issues as those raised by the proposed Trade Regulation Rule.

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[99] *Educational Assistance to Veterans*, *op. cit.*, at pp. 283, 284-5, Exhibit A-4.

[100] Vietnam Era Veterans Readjustment Assistance Act of 1974, Conference Report to accompany H.R. 12628, Senate Committee on Veterans Affairs, Report No. 92-1240 (October 7, 1974), Exhibit H-93. We should note that there are some difficulties in these latter two amendments. The denial of approval provisions forces the VA to engage in case-by-case determinations if it is to successfully police false and deceptive advertising--the very approach the F.T.C. and state attorneys general find expensive and often fruitless. The 50 percent placement provision has some statistical shortcomings which we discussed in greater detail earlier in this Section.

The situation here, then, is one that produces acute problems for all purchasers of proprietary school courses. The large input of taxpayers' monies has encouraged practices that are not only harmful to veterans but also have repercussions for non-veterans who enroll in these courses.[101] The adverse impact of these practices is exacerbated when consumers, including veterans, look upon the approval process as either a direct guarantee of federal approbation or at least an assurance that some supervisory agency exists to assist them.[102]

In economic and social terms, the costs can be great. Taxpayers fail to receive the benefits for which they have made their tax money available--vocational training that leads to marketable skills.[103] Veterans and others lose time and their commitment to career training while taking inappropriate courses and often must pay substantial sums of money from their own pocket for incomplete courses.[104] As with the Federally Insured Student Loan Program, which will be described in the next section, the veterans benefits program has not only become a way of life in the proprietary school industry, but has been a major contributor to many of the problems that have come to plague all vocational school consumers.

2. Department of Health, Education, & Welfare, United States Office of Education

A. Background

As large as the monetary involvement of the VA may seem, it pales when compared to programs operated by the United States Office of Education (USOE). Of the $9.2 billion distributed by all federal agencies in fiscal 1972 for all forms of aid to education, USOE was responsible for $4 billion and its share of the postsecondary market is increasing.[105]

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[101] In Part I, Section V-C(3) of this Report we discuss in detail the relationship between VA benefits and false, deceptive and unfair business practices.

[102] *See* Part I, Section IV-C, *supra*.

[103] *See* Part I, Section VII, *supra*.

[104] *See* Part I, Section VI, *supra*.

The financial aids that are most relevant for our purposes are the various student assistance programs supervised by USOE.[106] These programs accounted for approximately $2 billion in USOE funds in fiscal year 1974-1975 and were the largest category of disbursements for all types of aid to postsecondary education.[107] Included within the student financial assistance category are the following USOE programs: Basic Education Opportunity Grants, State Student Incentive Grants, Supplemental Educational Opportunity Grants, College Work Study Program, National Direct Student Loans, and Guaranteed Student Loans.[108]

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[105] Financing Post-Secondary Education in the United States, National Commission on the Financing of Post-Secondary Education (1973), at 107, Exhibit H-30; John Alden (September 5, 1973) "Federal Involvement in Post-Secondary Proprietary Vocational Institutions", Exhibit H-30; Federal Education Programs, Special Analysis H, OMB (1973), Exhibit H-38.

[106] Eligibility Provisions of the Higher Education Act of 1965, as amended, HEW, USOE, Exhibit H-57; 20 U.S.C. Section 1071 et seq. For a complete listing of all HEW sponsored education grant and assistance programs see the "Guide to OE Administratered Programs Fiscal Year 1974", American Education (March 1974), Exhibit H-71; see also "American Education's Annual Guide to O.E. Programs," American Education (August-September 1971): Exhibit H-128.

[107] HEW and USOE Task Force on Management of Student Assistance Programs, Preliminary Report (December 1973), p. 1, Exhibit H-28.

[108] The following provides a brief description of each program:

1. Basic Education Opportunity Grants (BEOG). The basic grant program provides a 100 percent federally funded grant to any student attending an eligible institution if the student meets certain financial criteria. The program is designed as the foundation or floor upon which all other student aid is based. Student eligibility for the program is determined by USOE (through a contractor, usually the school itself) using a standard family contribution schedule which assesses the family's expected contribution based on its income and assets. Grants are limited to $1,400 per school year.

2. State Student Incentive Grants (SSIG). Incentive grants are similar to BEOG's except that the states and the federal government share the costs on a 50-50 matching basis.

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108 (Continued)

Otherwise, the purpose of the program is similar to that of the BEOG program--to provide "substantially needy students" attending eligible institutions with a minimum amount of funding. Grants are limited to $1500 per school year and selection of recipients is performed by the state subject to review by the Commissioner of Education, USOE.

3. Supplemental Educational Opportunity Grants (SEOG). This program provides aid to exceptionally needy students who have no other source of financial assistance. Grants are made after all other sources of financial assistance have been exhausted or prove inadequate. Student eligibility is determined by the school and grants cannot exceed $1500 per year.

Unlike the BEOG program, SEOG allocations are established for each state based upon student attendance figures for the state. Further allocation limits are established for each school within the program. A school cannot exceed its individual allocation.

4. College Work Study Program (CWSP). College work study is a matching grant program of federal-institutional support in which the federal government pays 80 percent of the cost of employment of eligible students. The institution is responsible for selecting the eligible students and providing the work opportunities in areas that are permissible under the program. As with SEOGs, work-study monies are intended to supplement other forms of aid.

5. National Direct Student Loans (NDSL). This program is one of direct lending to eligible students by the federal government. Federal contributions account for 90 percent of the revolving loan fund, with institutional contributions accounting for the remainder. Students may borrow up to $10,000 during their academic career. Interest rates are set at rates well below the normal commercial rate and repayment schedules can stretch out over a 10 year period after graduation.

6. Guaranteed Student Loan Program (GSLP). The Guaranteed Student Loan Program provides a federal guarantee for loans made by private and commercial lenders. The federal government insures the loans made by private lenders to eligible students and thereby allows for lower interest loans to students. Federal funds are available to pay insurance claims on the loans, re-insurance of claims to student loans that have been guaranteed by certain state agencies, and to subsidize interest payments for certain students who have demonstrated financial need.

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By virtue of the Higher Education and National Vocational Student Loan Insurance Acts of 1965, proprietary vocational schools are eligible to participate in all of the programs briefly outlined here.[109] However, since these schools have largely relied on the Guaranteed Student Loan Program (GSLP) and its federal (FISL) component as the primary form of participation in USOE programs, we have provided below a more extensive discussion of the GSLP. It is our view that a more detailed analysis of this program will provide a revealing insight into the abuses perpetrated upon consumers when a massive federal subsidy program goes largely unregulated. Previously, we have alluded to the use of GSLP funds as an integral part of schools' sales pitches.[110] We will now describe in greater detail the impact of this program on the scope and nature of consumer abuse in the proprietary school industry.

b. The Guaranteed Student Loan Program.[111]

The primary purpose of the GSLP has been to encourage the use of private commercial funds to support the educational and vocational objectives of middle and low income families by

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[108] (Continued)

The GSLP has two components--federal guarantees and state guarantees. The federal portion of the program--Federally Insured Student Loans--exists only to guarantee loans in states which have not adopted their own state-wide program.

A more detailed description of these programs can be found in Federal Higher Education Programs Institutional Eligibility, Hearings before the Special Subcommittee on Education of the Committee on Education and Labor, U.S. House, July 1974, Part I, pp. 2-17, Exhibit H-188.

[109] P.L. 89-329 and P.L. 89-287; 20 U.S.C. Section 1071 *et seq.*, Exhibits H-56 and H-57.

[110] *See* Part I, Section V-C(3), *supra*.

[111] As of 1975, only 25 states and the District of Columbia had local programs under the GSLP program. This requires the federal government to remain active in insuring loans in the other 25 jurisdictions even though the original intent of the National Vocational Student Loan Insurance Act was to have federal subsidies available as a last resort for isolated cases. *See* Guaranteed Student Loan Program, Hearings Before the Permanent Subcommittee on Investigations of the Committee on Government Operations, U.S. Senate (November 1975), Part I, p. 7, Exhibit H-238.

providing federal guarantees for private loans.[112] In this regard, the program has been highly successful. In the eight years since the program's inception in 1966, a total of $6,972,060,761 in loans have been insured, $3,096,286,033 in the federal component (FISL) and $3,875,774,728 in the state component.[113] During the same period of time, average loan size has increased from $700 to $1200.[114]

However, these figures mask the problems that have arisen in and been created by the program. As with the Veterans' Administration program, the GSLP has been structured to defer initial eligibility decisions to nonfederal sources. In this case, delegation of authority has been made to non-public entities--private accrediting agencies--through a statutory scheme that allows participation by vocational schools in the program if the school:

> 1. admits as regular students only persons who have completed elementary or secondary school and who have the ability to benefit from the training offered by the school;
>
> 2. is legally authorized by the State to provide a vocational program that is designed to fit individuals for useful employment in recognized occupations;
>
> 3. has been in existence for 2 years;
>
> 4. is accredited by a nationally recognized accrediting agency....[115]

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[112] Loan to Vocational Students and Students in Institutions of Higher Education, 35 Fed. Reg. 16888 (1970), Exhibit H-43, Documents 2 and 3.

[113] Statement of T. H. Bell, Commissioner of Education, Department of HEW, before the Senate Subcommittee on Education of the Committee on Education and Labor (September 1974), p. 3, Exhibit F-49, Document 6. See also Guaranteed Student Loan Program, Advisory Council on Financial Aid to Students (1974), Exhibit H-68. The total GSLP commitment through fiscal year 1975 is estimated to be $7,585,000,000. See Guaranteed Student Loan Program, Hearing before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations (November 1975), Part I, p. 316-317, Exhibit H-238.

[114] Id. at p. 4.

[115] 20 U.S.C. Section 1085(c).

Moreover, as with the VA, the Commisioner of Education is instructed to avoid direct involvement in or control over the institutions made eligible under the program.[116] In essence, the statutory scheme is one of indirect federal involvement where USOE adopts the decision of the accrediting agencies as the basis for participation in its funding programs.[117]

As described in some detail later,[118] USOE's primary involvement with accrediting agencies is to insure that they meet certain minimal administrative and procedural standards.[119] Consistent with the congressional intent to avoid direct federal involvement in quality of education issues, USOE's Accreditation and Institutional Eligibility Staff (AIES) acts only to insure that these minimal administrative standards are met. These standards do not touch upon the uses, or abuses, of the insured loan program.[120]

This system may work well in theory,[121] but it has proved in practice to work enormous hardships upon consumers of vocational school courses. In the next part we will discuss in detail the accrediting process and its capacity to serve the interests of consumers. Suffice it to say at this point that reliance on proprietary accrediting agencies to render initial eligibility determinations has been misplaced. They have neither the authority, the staff, nor the inclination to insure that consumers are provided with remedial relief from the abusive enrollment, recruitment and refund practices outlined above.[122]

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[116] 20 U.S.C. Section 1141; 38 U.S.C. Section 1653(a).

[117] See generally Finkin, "Federal Reliance on Voluntary Accreditation: The Power to Recognize as the Power to Regulate," 2 Journal of Law and Education 339 (July 1973), Exhibit F-32. In some cases, the Commissioner of Education may allow participation in a USOE program in the absence of accreditation. See Unaccredited Schools Participating in FISL, Exhibit H-16.

[118] See Part I, Section VIII-D, infra, for an extensive discussion of accreditation.

[119] 35 Fed. Reg. 30041 (August 20, 1974); 45 C.F.R. Section 149, Subpart A, Proposed Rules - Nationally Recognized Accrediting Agencies and Associations: Proposed Criteria for Recognition, HEW/OE (45 C.F.R. Part 149) Published in Federal Register, Vol. 39, No. 42 (March 1, 1974), Exhibit F-31.

[120] USOE is fond of talking about the "triangle of governance." The basic principle is to defer issues of educational quality to the states (licensure) and private groups (accreditation) and to involve the federal government only in purely ministerial functions. See testimony of T.H. Bell, Commissioner of Education, HEW (December 16, 1974), Tr. 1909, 1912-13.

[121] Educational Consumer Protection Features of the Revised Criteria for Nationally Recognized Accrediting Agencies and Associations, HEW, AIES (April 18, 1974), Exhibit No. H-19.

What the statutory scheme has accomplished is the proliferation of proprietary school participation in the FISL program. Proprietary schools have succeeded in accounting for over one-third of all loans made under the program,[123] although they make up only 20 percent of the eligible institutions in the program.[124] But these figures alone do not reflect the rapid growth of proprietary school participation in the last few years. One HEW study listed the FISL participation of five selected proprietary schools as follows:[125]

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[122] Letter from J. Proffitt to D. Hart, Executive Secretary of the AICS Accrediting Commission (June 12, 1973), Exhibit No. H-74; *See also* "Student Defaults, Sales Training, Inc.," USOE *Division of Insured Loans* (January 1973), Exhibit H-70; letter from P. Muirhead to Senator Brooke (May 8, 1974), Exhibit No. H-84; statement of Richard Fulton before the Special Studies Subcommittee of the Committee on Government Operations, U.S. House (July 24, 1974), Exhibit H-90, document 8. Also note the critique of USOE's policy of referring all student complaints against accredited vocational schools to the accrediting agencies for review and action. *A Report on the Accreditation Policy Unit's Procedure for Handling Student Complaints*, ABW/USOE (August 15, 1974), Exhibit H-198.

[123] Guaranteed Student Loan Matured Paper, Bureau of Post-Secondary Education, HEW, Letter of March 7, 1974 from J. W. Moore to J. Levien, Exhibit H-43.

[124] Testimony of T.H. Bell, Commissioner of Education, U.S. Office of Education HEW, Tr. 1909, H-11.

[125] *Survey of Federal Involvement in Post-Secondary Proprietary Vocational Institutions*, HEW (1974), p. 4, Exhibit H-132.

	Number of Students Enrolled with Guaranteed Loans	
	FY 1970	FY 1973
Commercial Trades Institute	1	50,906
Advance Schools	1,209	80,891
DeVry Institute of Technology (Bell & Howell Schools)	2,663	69,934
Sawyer College of Business	78	1,620
Allied Institute of Technology	53	3,128
TOTAL	4,004	206,479

In another report, HEW's Reports and Data Analysis Section found that the total volume of loans disbursed by 13 proprietary home study schools was $91 million for fiscal 1972, an increase of 60 percent over 1971 and 1150 percent over 1970.[126]

There is no indication that reliance on the FISL program has lessened in recent years. HEW's most recent figures for participants in the program show the following dollar amounts for total loans outstanding at selected schools[127]:

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[126] Analysis of Home-Study Schools in the Guaranteed Student Loan Program, HEW, USOE (January 26, 1973), Exhibit H-226. One early study by HEW found that in the six-month period from December 1971 to June 1972, 44 proprietary schools increased their cumulative loan amount by 71.5 percent (from $21 to $36 million) and that five large proprietary school users of FISL increased their six-month figures by 220 percent (from $34 to $110 million). The five largest users were Advance Schools, Commercial Trades Institute, Bell and Howell, ITT Technical Institute, and Marsh-Draughon Colleges. Memorandum from Chief, Reports and Data Analysis Section to Chief, Federal Insurance Section, HEW (July 10, 1972), Exhibit H-131.

[127] Federally Insured Student Loan Program, Selected Operating Data for 26 Vocational Education School Lenders (February 17, 1976), Exhibit H-236. See also exhibits to the testimony of J. O. Brown, National Home Study Council, Exhibit L-131, where three schools list their new FISL enrollments for one year period to be 69,796, 26,661, and 29,412 respectively. (Names of schools are unavailable due to deletion of all names and addresses by NHSC prior to submission of the material).

	Federal Insured Loans Outstanding June 30, 1975
Bradford Schools	$ 1,387,000
Cleveland Institute of Electronics	3,827,000
Commercial Trades Institute	27,198,000
Computer Learning Centers	1,523,000
Bell & Howell Schools	37,833,000
ITT Tech	8,502,000
Lafayette Academy	1,872,000
National College of Business	558,000
United Electronics Institute	1,430,000
Washington Drafting Schools	523,000

Accrediting associations for residential schools reported to the Senate's Permanent Subcommittee on Investigations that there was active participation by member schools in the guaranteed loan program. Statistics for trade and technical schools showed that 69 member schools had over 50 percent of their student bodies attending by virtue of guaranteed loans[128] while secretarial and business schools reported that 70 percent of all schools had some loan participation and that 67 schools who were also lenders had $10,032,578 in FISL loans outstanding in 1974.[129]

HEW worsened the situation when it allowed some proprietary schools to act as their own lenders--*i.e.*, the schools were empowered to make loans to their own students and the federal government would insure the repayment of those loans. As of 1974, sixty-six proprietary school lenders succeeded in making $160,674,000 in loans to their own students, outstripping college and university lenders by a factor of 4 to 1.[130] The figures listed in the chart immediately above also pertain to schools which act as their own lenders. The ten schools listed made over $84 million in federally insured loans to students attending their courses.[131]

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[128] No indication of the size of these schools was given so that it is impossible to determine what percentage of NATT's member schools' total enrollment is included in these 69 schools.

[129] Guaranteed Student Loan Program, Hearings before the Senate Permanent Subcommittee on Investigations (December 1975), Part 2, pp. 372, 383, Exhibit H-238.

[130] Loans Outstanding and Delinquency Rates for School Lenders by Type of School, HEW (October 1974), Exhibit H-159. *See also* memorandum of July 10, 1972 from Chief, Reports and Data Analysis Section, HEW, to Chief, Federal Insurance Section, HEW, Exhibit H-131.

What has been the impact of this massive infusion of monies? After reviewing the situation, one commentator labeled these proprietary schools "FISL factories" and concluded:

> On balance, however, the federal government has been much more of a help than a hindrance to the industry as a whole. Through massive programs of aid to students--principally the G.I. Bill and FISL--government has provided the better organized parts of the industry with the wherewithal to expand rapidly and turn a profit.[132]

More importantly, the availability of federal loans and grants has worsened the shoddy recruitment, advertising, and enrollment practices of the proprietary schools industry.[133] In conjunction with deceptive advertising, high pressure sales tactics and misrepresentations of course difficulty and content, FISL monies have allowed marginal schools to add thousands of students to their rolls without regard for proper career training.[134] Advertisements placed in the media and "canned" sales pitches entice students with claims of federal grants or subsidies.[135] Often the mere mention of the federal government to potential students implies, and is understood as, government inspection and approval of course content and job placement capabilities. As one HEW official wrote in regard to an Oklahoma business school:

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[131] Federally Insured Student Loan Program, Id., Exhibit H-236.

[132] Van Dyne, "The FISL Factories", The Chronicle of Higher Education (August 4, 1975), p. 4.

[133] Saunders, "HEW Role in Educational Consumer Protection," Address given at the National Invitational Conference on Consumer Protection in Post-Secondary Education (March 1974), Exhibit H-29; A Federal Strategy Report for Protection of the Consumer of Education, FICE Subcommittee on Consumer Protection (December 1974), Exhibit H-95, H-170; letter of D. Lawson, undated, Exhibit D-231. See also Part I, Section V-C(3), supra.

[134] Van Dyne, "The FISL Factories," The Chronicle of Higher Education (August 4, 1975), p. 4-5.

[135] See, e.g., Boston Globe series on the Proprietary Vocational School Industry in Massachusetts, March 25 through April 3, 1974, Exhibit D-1, particularly "ITT Tech Watches Profit, Puts Quality Training in Back Row," (March 26, 1974), p. 20. The article describes how students are enticed to enroll in ITT by having their tuition paid by a federally insured loan; testimony of R. Zepernick, former salesperson Tr. 3930;
(Continued)

> OE [Office of Education] feels that IBA is not selecting students carefully, that they are going into low-income housing areas and signing up everyone in the area on one of these loans, without regard to the student's ability to profit by the training. From what we have observed, these are extremely high-risk loans financially, and the lending institutions are accepting them blind without regard for due diligence in granting the loans.[136]

In another instance, a USOE investigation team concluded after its review of default rates at several proprietary residential schools that "salesmen who had struggled for years with limited or non-existant student financing programs now had an almost 'carte-blanche', open-ended, unrestricted source of low-interest, immediately available funds for their prospects." The natural and logical reaction was to oversell.[137]

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135 (Continued)

Chicago Tribune, Task Force, "Career Schools--Results Seldom Equal Promises" (June 8, 1975-June 12, 1975), Exhibit D-284. See also Part I, Sections IV and V, supra.

[136] Memorandum from Leo Hatten, Insured Loans Section, USOE Regional Office X, to J. Donaway, Chief, Federal Insurance Section, DIL (April 26, 1972), Exhibit B-12.

[137] Visitation Report, LTV Schools, HEW-AICS, undated, Exhibit B-77; see also letter of July 21, 1971, from M. L. Chandler to W. Simmons, USOE, p. 2, Exhibit No. E-16.

We should also note that FISL also has an adverse impact on competitors as well as consumers. Unaccredited schools often chafe under the regulations that allow their accredited competitors ready access to federal largesse. See, e.g., letter from A. Compton, Chairman of the Board, Service Systems Institute, to Assistant Secretary of Education (February 6, 1973), Exhibit F-38.

But the impact of FISL monies on consumers does not stop with worsening of recruitment and sales tactics. Unlike various federal grant programs, the FISL program is one in which the federal government views itself as a third-party guarantor of the private transaction between the student and the lender. As a loan guarantor, the Office of Education claims not to vouch for the quality of the course, the recruitment or sales practices, or the placement success of the school. What the federal government does guarantee is that if the student fails to repay the lender, USOE will repay the lender and then pursue the student for reimbursement.[138] As indicated previously, in many cases the school and the lender are the same entity.

Whatever the intended purpose of this approach may have been, the results have been to provide schools and salespeople with the incentive to obtain signatures on loan applications now and to argue about the propriety of enrollment, sales, and refund practices later. The FISL program fully protects the lender and leaves the student-borrowers to their own devices, often compelling them to face the collection efforts of the United States Government itself.[139] A loan officer for one accredited residential school--Computer Learning Center, Los Angeles--described the attitude prevalent at the school:

> The student's success ratio or the retention ratio is very low. Many students flunk out, but that's all right as far as the school is concerned. They have no vested interest in keeping the student in.... If the student doesn't pay in the case of the National Direct Student Loan, the school has the money, and they'll make whatever efforts are necessary to try to collect, but it really doesn't matter. In the case of the FISL they simply wait the prerequisite amount of time, fulfill due diligence and then collect the government insurance. So, regardless of whether the student succeeds or not, the school gets their money, and this is really their attitude.[140]

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[138] Carper, "Uncle Sam's Squeeze on Students," Washington Post (April 25, 1975), Exhibit D-280; testimony of C. Hampton, Regional Director, HEW, USOE, Tr 2352-53; testimony of G. Burnson, former student, Control Data Corporation, Tr. 4405.

[139] S. Kronstadt, "Student Loans: How the Government Takes the Work Out of Fraud," Washington Monthly (November 1973), p. 5, Exhibit H-67.

[140] Transcript of tape of D. Lawson, Financial Aid Office, Computer Learning Center, Exhibit D-231.

In another case, a student enrolled in a proprietary school but withdrew well within the three-day cooling-off period. He was assured by the school that his FISL loan application would be voided. Nearly two years later, he received notification that his loan was in repayment status and that his account was delinquent. In response to his inquiries, HEW stated:

> The participation of West Coast School as an "eligible institution" in the Federally Insured Student Loan Program was based upon its compliance with the legal requirements of eligibility (i.e., admissions policy, legal authority to operate, program offerings, type of control, and civil rights compliance) in addition to accreditation by a nationally recognized accreditation commission. Under the provisions of this program, the Federal Government cannot guarantee satisfactory performance by the students, lenders, or educational institutions.
>
> ...While we appreciate your situation, we are unable to absolve a student/borrower of his obligation to repay in the rare instance where loan funds are invested in a school which fails to perform on its enrollment contract.
>
> I suggest that you obtain legal counsel....[141]

Even in the face of schools that have gone bankrupt, leaving students with partially completed courses, HEW has followed its mandate to pursue the student and collect on the loans ignoring possible wrongdoing by the school.[142]

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[141] Guaranteed Student Loan Program, Hearings Before the Permanent Subcommittee on Government Operations, U.S. Senate (November 1975), p. 199, Exhibit H-238; see also related letters on file in Exhibit H-142 and D-247, and letter of June 5, 1973 from L. Mallory, HEW, to J. Ashmann, Deputy Attorney General of California, Exhibit H-177; testimony of S. Soehnel, San Mateo County Legal Aid Society, Tr. 3996.

[142] See "Charges of Fraud Hit Student Loan Program Backed by Government," Wall Street Journal (June 30, 1975), p. 1, Exhibit D-292. Recently, USOE has come to modify this position. Guaranteed Student Loan Program, USOE states that if a school ceases to operate without completing its teaching obligations to students, USOE will only guarantee that portion of the (Continued)

Although HEW may be sympathetic to the reasons that cause students to default on their loans, it has not diminished the efforts exerted by USOE to stand behind the loans made to students, even when those loans have been made by the very school about which the consumer is complaining so bitterly. HEW's determination to collect on loans it guarantees at all costs is pervasive and consistent. After providing a detailed summary of typical student complaints--including deceptive advertising, ambigiuous refund policies, lack of awareness that a loan transaction had been entered into, lack of school and potential employer relationship, and questionable instruction--one Regional Director of HEW's office of Guaranteed Student Loans testified as follows:

> Mr. Badal: Are any of those sources of complaint grounds for exonerating a student from his FISL obligation?
>
> Mr. Hampton: No, it is not.
>
> Mr. Badal: He's obligated under the loan whether any of these things happen or not?
>
> Mr. Hampton: The loan is a personal loan the student makes for education. The controlling factor is that it is supposed to be made for education and used for education on that basis. He's obligated to his loan.[143]

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[142] (Continued)

loan that reflects the portion of the course the student was able to complete. 40 Fed. Reg. 7961 (February 24, 1975). However, we should note two important points: (1) USOE will still pursue a defaulting student for as much of the loan that related to completed courses and considers that part of the loan valid; and (2) for lenders who are not themselves schools, USOE's interpretation only affects loan paper after February 21, 1975. Recent attempts have been made in Congress to provide greater relief to consumers who find themselves enrolled in schools that have terminated operations. See testimony of Congressmen A. Bell and J. Pettis before the House Committee on Government Operations's Special Studies Subcommittee (July 1974), Exhibit H-90, document 2.

[143] Testimony of C. Hampton, Director, Region IX, Office of Guaranteed Student Loans, Tr. 3242-43, 3247. But see exchange of letters between HEW and the Attorney General of Texas reprinted in Guaranteed Student Loan Program, Hearings before the Permanent Subcommittee on Investigations, U.S. Senate, Part 2, pp. 334-347, Exhibit H-238.

In sum, there is no relief for the student who feels that he has not received the service he has contracted for. The FISL program is structured so that the student cannot even register his discontent by withholding payment. If the student seeks to use this approach, the school merely declares the individual to be in default, demands payment from the federal government, and leaves the government to pursue the student:

> There is no "forgiveness" of the loans . . . The students must pay--even though their education did not suit them for employment, they dropped out and couldn't get refunds, or their school collapsed in midterm . . . .
>
> USOE, in other words, disclaims any responsibility for the student's plight.[144]

The worsening of sales and enrollment practices due to massive infusions of federal monies and the remote attitude of USOE to the problems that plague consumers is reflected in statistics on defaults under the FISL program. As we have stated above, a default occurs when a student fails to pay the lender in timely fashion and the lender in turn requests reimbursement by USOE. While they account for 30 percent of all loans in the GSLP program, proprietary vocational schools they account for 50 percent of all program default payments.[145] This amounted to approximately $24 million paid out in one year by USOE to lenders for students who attended proprietary schools and defaulted.[146] The Office of Education's projections indicate that the situation will deteriorate further in the future. USOE expects proprietary schools' loan volume to fall to 28 percent of all loans made while their default rate will climb to 57 percent of all program defaults.[147] Based on these projections, in fiscal year 1976 the U.S. Office of Education will pay over $83,000,000 to lenders for students who attended proprietary schools and defaulted on their FISL loans.[148] A large portion of this amount will go to lenders who are the very schools which caused the discontent that created the default.

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[144] Carper, "Federal Education Loans: Ripping Off the Students," The Nation (July 19, 1975), Exhibit H-206.

[145] Guaranteed Student Loan Program, Matured Paper, School by Type Program and Accrediting Agency as of June 30, 1973.

[146] Task Force on Management of Student Assistance Programs, HEW, USOE (December 1973), Exhibit H-28.

[147] GSLP Loan Estimation Model, Office of Planning, Budgeting, and Evaluation, USOE, Contract No. OEC-O-73-1362 (September 1974), Exhibit H-161. See also Default Borrower Characteristics, USOE, OGSL (1976), Exhibit H-236.

This statistical picture is equally bleak for delinquencies. A delinquent account, as opposed to a default, is one in which the student/borrower is behind in payments to the lender. An account that is more than 120 days delinquent can be declared in default. In this category as well the proprietary schools set the pace. As of June 30, 1974, proprietary school lenders had 46 percent of their own FISL paper in delinquency status. Moreover, since proprietary school lenders were responsible for over three-quarters of all school/lender FISL loans made, their delinquency rate accounted for 87.9 percent of all delinquent funds, leaving colleges and universities with the remaining 12.1 percent.[149] Statistics from a few of these proprietary school lenders are revealing:[150]

	Delinquency Rate, as of June 30, 1975
Albert Merrill School	65.3%
Commercial Trades Institute	42.2
Computer Learning Center	41.9
Bell & Howell	88.7
ITT TECH	54.2
Lafayette Academy	20.4
Pacific College of Medical and Dental Assistants	42.7

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[148] Testimony of T. H. Bell, Commissioner of Education, HEW, before the Permanent Subcommittee on Investigations of the Senate's Committee on Government Operations (November 1975), reported in Hearings before the Subcommittee, p. 268, Exhibit H-238. In his testimony, Commissioner Bell noted that default claims in the program had been increasing rapidly from 32,665 claims in fiscal 1973, to 67,799 claims in fiscal 1975, and finally projected 146,437 claims in fiscal 1976. The Commissioner anticipates that these 146,000 claims will cost U.S. taxpayers $146,437,000.

[149] Loans Outstanding and Delinquency Rates for School Lenders by type of school, HEW, USOE (1974), Exhibit H-159.

[150] Federally Insured Student Loan Program, Selected Operating Data for 26 Vocational Education School Lenders, HEW, OGSL (February 17, 1976), Exhibit H-236.

United Electronics Institute	51.1	
Washington Drafting School	49.8	
Wyoming Tech. Institute	50.1	(6/30/74)
Atlanta College of Medical and Dental Assistants	19.9	(6/30/74)

As briefly mentioned above, the reasons proprietary school students default or become delinquent in such large numbers are closely related to their own feelings about the adequacy and accuracy of the school's pre-enrollment representations and its post-enrollment performance. The record in this matter is replete with evidence that indicates that while FISL facilitated the enrollment of the student/consumer, the school failed to offer the services expected.[151]

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[151] One student noted:

> After I graduated, the school did not make any real effort to help me find a job. I believe they only got me one interview or maybe none.
>
> I arranged interviews on my own .... At these interviews I was told I would have to start as a delivery boy and move up slowly. ...These companies said they did not want X school graduates [*sic*].
>
> I paid for this training with a Federally Insured Student Loan. The course was around $980.000. Since I can't get a job, I have stopped paying my student loan. The government has tried to garnish [*sic*] my wages....
>
> I don't feel like I should have to pay for training that I cannot use. I would never have taken this course if I had known there was any possibility at all of me not being able to get a job when I got out.

See Van Dyne, "FISL Factories," *The Chronicle of Higher Education* (August 4, 1975), p. 5. *See also* HEW Report on Marsh-Draughon Schools (May 24, 1974), Exhibit H-192, and HEW Report on Alverson-Draughon College (December 31, 1974), Exhibit H-193.

The sentiment expressed by this student is not atypical. Many of the complaint letters received during the course of this proceeding reflect the same attitude that because the school has failed to fulfill its obligations as represented to the consumer, the consumer should not be fully obligated to his contract. *See* student complaint letters, Exhibit J-1.

This problem plagues the FISL program and has reinforced the serious default problem that exists in the proprietary sector.[152] HEW's own review of high default activity in ten proprietary schools concluded that defaults were generated by:

> ...a pattern of abuses and practices.... These include: inadequate student records (transcripts, attendance, class schedules); high rates of absenteeism; inadequate guidance and counseling services provided to the student; indiscriminate admission policies and consistent failure to determine prospects' ability to benefit from a course of study; low completion rate; untimely refunds, if any; failure of sales pesonnel or admission officers to apprise the student of the significance of the loan transaction; utilization of loans for students who have not completed secondary education in violation of federal regulations....; irregularities in loan disbursement documents and promissory notes....low placement rates; and student dissatisfaction.[153]

Further evidence that defaults and delinquencies are closely tied to students' own feelings about the accuracy of a school's representations or the adequacy of its training comes from other sources at HEW. The Supervisory Collection Officer who is responsible for supervising default collection efforts in HEW's Chicago Regional Office testified at the hearings to the reasons students default on their FISL loans:

> I am here today to report on the major reason given my collectors for refusal to repay guaranteed student loans made to finance education at proprietary schools. The overriding complaints we receive have

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[152] Carper, "Uncle Sam's Squeeze on Students," Washington Post (April 27, 1975), Exhibit D-280; Van Dyne, "The FISL Factories," The Chronicle of Higher Education (August 4, 1975), p. 4; Carper, "Federal Education Loans: Ripping Off the Students," The Nation (July 1975), Exhibit H-206; S. Kronstadt, "Student Loans: How the Government Takes the Work Out of Fraud," Washington Monthly (November 1973), Exhibit H-67.

[153] Status of Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program, USOE, DHEW, Region IV (1975), Exhibit H-201; but see Wennerdahl, "Reduction of Defaults on Insured Student Loans," Illinois Guaranteed Loan Program (1972), Exhibit A-10.

> to do with claims and statements made by representatives of these schools as well as omissions of facts and procedures that the student should know.
>
> . . .
>
> All such students, whether they drop out or graduate, are understandably furious at deceptions. The most common phrase we hear is: "Why should I pay for something I didn't receive?" The students feel powerless and duped. They tell us in great detail the empty promises told to them, the indifference of the schools to their frustrations, and most of all, time and money wasted.[154]

The Commissioner of Education has himself testified that HEW's default problems ultimately stem from the student's own perceptions of the service he has received:

> A serious, and growing, problem evidenced by the high default figures centers on the student who refuses to repay his loan obligation because he feels the educational institution did not provide the services promised.[155]

Commentators have recommended that eligibility for federal programs be separated from automatic reliance on the decisions of private accrediting bodies and have called for stronger direct federal efforts to prevent the abusive practices that lead to defaults. It is their view that the consumer protection problems caused by proprietary schools, which in turn create substantial defaults and delinquencies, would be reduced if greater protections and remedies were implemented at the federal level.[156]

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[154] Testimony of J. Vogel, Supervisory Collection Oficer, HEW, OGSL, Chicago, Illinois, Tr. 7759, 7764.

[155] Testimony of T. H. Bell, Commissioner of Education, in Guaranteed Student Loan Program, hearings before the Subcommittee on Investigations (November 1975), p. 268, Exhibit H-238. See also Kronstadt, "Student Loans: How the Government Takes the Work Out of Fraud," Washington Monthly (November 1973), p. 6, Exhibit H-69.

[156] See e.g., Private Accreditation and Public Eligibility, Brookings Institute and the National Academy of Public Administration Foundation (1974), pp. 418, 456, Exhibit D-21.

Initially, the Office of Education responded by redoubling its collection efforts against students in the hopes of mitigating the loss of federal funds through default payments.[157] The General Accounting Office encouraged this effort by bringing USOE to task for its casual administrative procedures, and recommending that stiffer actions be taken to improve default recoveries.[158] Since these reports, HEW has significantly increased its collections staff[159] and staffing levels at the Office of Guaranteed Student Loans have tripled since 1972.[160]

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[157] Carper, Exhibit D-280, Student Financial Assistance, Hearings Before the Special Subcommittee on Education, Committee on Education and Labor, U.S. House, Part 3 (May 1974), statement of J. W. Moore, Associate Commissioner, USOE, p. 26, Exhibit H-235.

USOE's collection efforts often rival those of the most vigorous private collection agencies. For example, HEW's Dallas Regional Office made a practice of sending form letters to students regarding their loans which implicicitly threatened criminal action. One such letter, marked NOTICE OF APPOINTMENT indicated the following:

> Demand is hereby made upon you to appear in this office...to establish whether you have any defenses or counter claims whereby court action should not be taken against you....

In a space reserved for "office use only," there are boxes labeled "court", "district attorney" and "prosecute". These letters were sent to students who often had no knowledge of a loan being made to them by the proprietary school they attended. Guaranteed Student Loan Program, Hearings before the Permanent Subcommittee on Investigations, Part 2, testimony of W. Goodman, Office of the Attorney General of Texas, Id. at pp. 323, 361, Exhibit H-238.

[158] GAO Report to the Congress, "Office of Education Should Improve Procedures to Recover Defaulted Loans Under the Guaranteed Student Loans Program," B-117604(7) (1971), p.14, Exhibit H-46. See also the similar GAO Reports No. B-164031 (1973), Exhibit B-61; B-164031(1) (1974), Exhibit H-138.

[159] Testimony of T. H. Bell, Commissioner of Education, before the Permanent Subcommittee on Investigations (November 1975), p. 268, Exhibit H-238.

[160] Changes in Authorized Staffing Levels, OGSL, Fiscal Years 1966-1976, in hearings before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations (November 1975), p. 316, Exhibit H-238.

Only recently has USOE come to see that improved default statistics would result if greater control were obtained over the administrative and enrollment practices utilized by the individual schools in the program. In that regard, it has promulgated regulations for participation in the FISL program which require all eligible institutions to:

1. maintain complete and proper records pertaining to student admissions, standing, and loan transactions;

2. provide a fair and equitable refund policy;

3. make a good faith effort to present each prospective student with a statement about the institution, its programs, facilities, and faculties, and in the case of vocational schools placement date (if any);

4. enroll only persons who are able to benefit from the course of study.[161]

In addition, these new regulations will require that a review of a school's participation in the program be triggered if the school's default rate exceeds 10 percent, its drop-out rate 20 percent, or the number of its students using FISL loans 60 percent.[162] The purpose of the review is to determine whether the school's participation should be limited, suspended, or completely terminated.

As welcome as these changes are, they do not constitute an attempt to provide proprietary school consumers with independent remedies and protections.[163] In part, the vagueness of these provisions stems from USOE's statutory responsibility for all postsecondary institutions including colleges and universities. Therefore, its regulations must be modified to account for colleges, universities and other non-profit and public institutions participating in the GSLP. As such, the regulations have been drawn more as guidelines than as specific requirements. While an extensive critique of these regulations is not necessary at this point, a brief review of some of USOE's regulations will help to highlight the extent to which consumers will derive little benefit from the new provisions. For instance, the refund required by the regulations must be "fair and equitable".[164] Putting aside the difficulties inherent in the definition of these words, it is clear that proprietary schools have interpreted them to allow for the continuance of the very refund policies which we have argued in Section VI of Part I of this Report are abusive to consumers.[165] USOE has provided no indication or guidelines to suggest otherwise.[166]

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[161] Federal, State and Private Programs of Low Interest Loans to Students in Institutions of Higher Learning, 40 Fed. Reg. 7586 (February 20, 1975). See also Hearings before the Subcommittee on Postsecondary Education of the Committee on Education and Labor, U.S. House (April 1975), pp. 111-12, proposed H. R. 3471, Exhibit H-235.

[162] 40 Fed. Reg. 7586, 7596 (February 20, 1975), 45 C.F.R. Section 177.66.

[163] This should not be construed to mean that HEW has been blind to the worst administrative abuses of the GSLP program or remiss in its duty to prevent certain programmatic malpractices. See HEW Procedures and Resources for Prevention and Detection of the Committee of Government Operations, U.S. House, (April, May, June, 75), Exhibit H-218. However, administrative corrections do not amount to protection of consumers in areas such as recruiting, sales, enrollment and refund practices.

In another area where the HEW provisions interface with the proposed Trade Regulation Rule, USOE states that vocational schools participating in the GSLP must make a "good faith effort" to provide prospective students with "the most recently available data" on the percentage of students who obtained jobs in fields for which they are trained and their entry level salaries.[167] As with the "fair and equitable" refund concept, this provision is so imprecise that it is difficult to determine exactly what data are to be provided. There are no guidelines to describe what a good faith effort is, what form disclosures must take, the manner of their delivery, and what data can be included or excluded.[168]

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[164] 45 C.F.R. Section 177.63(a).

[165] See Supplemental Comments of the Association of Independent Colleges and Schools (November 21, 1975), p. 39, Exhibit K-867; testimony of Coleman Furr, Director of Coleman College, Tr. 6943, 6946-47; testimony of R. A. Fulton, Executive Director of the Association of Independent Colleges and Schools, Tr. 9001; testimony of W. Fowler, Executive Director, National Home Study Council, Tr. 9091; testimony of C. Mohling, Merritt-Davis Business College, Tr. 4813.

[166] Indeed, the criteria listed in the regulations stipulate that in judging the fair and equitable nature of a refund policy, the Commissioner of Education will look to whether the school's particular policy is required by state law or whether "in the case of an accredited institution, the pertinent accrediting body." 45 C.F.R. Section 177.63(b)(5) and (b)(6).

[167] 45 C.F.R. Section 177.64.

Moreover, schools cannot look to accrediting associations to assist them in interpreting this federal requirement of a "good faith effort". All of the proprietary school accrediting associations have indicated that they have no intention of trying to define what USOE cannot define for itself.[169] It is little wonder that individual school owners have difficulty in understanding these HEW regulations.[170]

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[168] The type of instructions provided by USOE are cryptic at best:

> Mr. Badal:
>
> Do you have any information that you could give us on what [HEW's] Region 9 would consider a good faith effort? How are you going to interpret those words for schools in Region 9?
>
> Mr. Hampton:
>
> The interpretation of the good faith effort with respect to providing information to that student is that the information is factual and supportable and they have actually carried out that particular function. I would interpret that as having complied with the regulation.

Testimony of C. Hampton, Regional Director, HEW, OGSL, Region IX, Tr. 3246-47.

[169] For example, the head of one accrediting agency testified as follows:

> Mr. Sheldon: Under the new Office of Education regulations some kind of placement disclosures are going to be required for participating schools.
>
> ***
>
> Is NHSC considering standards for such disclosures?
>
> Mr. Fowler: No.

(Continued)

Moreover, even if one could determine what a good faith effort was, the HEW regulations have an additional shortcoming. If a school is unable, after exerting a good faith effort, to obtain placement and salary data for its own students, it may then distribute generalized data about employment and earnings in the occupational field for which the school offers training.[171] Yet this is precisely the data that the record shows to be often misused by vocational schools to convey erroneous, irrelevant, or misleading information to students.[172]

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[169] (Continued)

Testimony of W. Fowler, Executive Director of the National Home Study Council, Tr. 9090-91. See also the testimony of R. Fulton, Executive Director of AICS, Tr. 9000; testimony of W. Goddard, Executive Director, NATTS, Tr. 9217-18; and testimony of B. Ehrlich, Counsel of NHSC, NATTS, and CAC, Tr. 9375.

[170] See, e.g., the testimony of C. Mohling, Merritt-Davis Business College, Tr. 4812:

> Mr. Badal: .... [C]ould you define for me what you consider a good faith effort to collect and distribute data?
>
> Mr. Mohling: ...I'm sure that it's one wherein you establish an advisory committee that would have direct input to you as to what kinds of opportunities are available, does you curriculum meet these particular employment challenges, is it the current thing, is it out of date, what is the projection for expansion in the future.

[171] 45 C.F.R. Section 177.64.

[172] See Part I, Section IV-B(2) supra, and Part II, Section IV-B, infra.

In essence, the regulations issued by HEW are neither precise enough nor broad enough to provide consumers with relief from abuses perpetrated by vocational schools. Here, as with the Veterans' Administration, the availability of massive amounts of federal monies has worsened the plight of consumers. While HEW has increasingly come to see that federal monies would be more effectively utilized if consumer protection safeguards are built directly into subsidy programs, its attempts to remedy the situation have not been sufficient. HEW remains wedded to the "triangle of governance" concept; *i.e.*, that the combination of state laws, accrediting standards, and USOE regulations will serve consumers' interests.[173] It is difficult to comprehend how the regulatory whole can be greater than the sum of its parts. As shown in other parts of this Report,[174] neither state laws nor accrediting associations provide any basis for assuming that they can or do protect vocational school consumers. Consumers and taxpayers continue to pay for the malpractices of the proprietary school industry without any assurance that the system of deferral to accrediting bodies and state agencies provides adequate protection.

D. Accreditation

As described previously, accreditation is a vital element in the fabric of school regulation. Accredited schools receive different treatment under the Veterans' Administration's approval system and eligibility in all U.S. Office of Education programs is largely reserved for accredited schools.[175]

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[173] Testimony of T.H. Bell, Commissioner of Education, Tr. 1913; testimony of P. Muirhead, Deputy Commissioner, Bureau of Postsecondary Education, HEW, in *Federal Higher Education Programs Institutional Eligibility*, hearings before the Special Subcommittee on Education of the House Committee on Education and Labor, Part I (July 1974), Exhibit H-90, document 7; testimony of T.H. Bell, Commissioner of Education, *Guaranteed Student Loan Program*, hearings before the Permanent Subcommittee on Investigations (November 1975), 279-80, Exhibit H-238.

[174] *See* Part I, Sections VIII-B, *supra*, and VIII-D, *infra*.

[175] Furthermore, some states allow accredited schools to avoid the express requirements of state licensing laws by accepting accreditation in lieu of compliance with those laws. *See* testimony of W. O'Brien, Vice President of the National Association of State Administrators and Supervisors of Private Schools (November 19, 1974), Tr. 238.

In the proprietary school industry, as with other types of schools, accreditation is a voluntary peer-review process. In principle, members of the accrediting organization periodically review other members in order to ascertain their commitment to self-imposed standards and criteria. The proprietary school sector has four accrediting agencies that need concern us here: the National Association of Trade and Technical Schools (NATTS); the National Home Study Council (NHSC); the Association of Independent Colleges and Schools (AICS); and the Cosmetology Accrediting Commission (CAC).[176] Approximately 1,500 proprietary schools are listed as accredited and eligible for HEW-sponsored programs.[177]

Private educational associations have generally developed standards and procedures to be used in conducting the peer evaluation that is the essence of accreditation. The prototypical procedures of an accrediting organization usually involve the following:

1. establishing educational standards in collaboration with educational institutions and other appropriate constituencies;
2. conducting program self-evaluations by applicants for accreditation under the guidance of the accrediting body;
3. conducting on-site inspections of applicants to determine their compliance with the accrediting standards;
4. publishing lists of accredited schools; and
5. periodically re-evaluating accredited schools to ascertain continued compliance with accrediting standards.

This basic format is followed in the proprietary school industry where accreditation consists of self-evaluation by the applicant/school, examination by a group of peers, and re-examination every four to six years.

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[176] Nationally Recognized Accrediting Agencies and Associations, HEW, Accreditation and Institutional Eligibility Staff (1972), Exhibit F-19. Because of the similarity of the procedures applied by all four organizations, we will not attempt to describe each in detail at this point.

[177] Hearings before the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, statement of T.H. Bell, Commissioner of Education, HEW (November 1975), p. 271-272, Exhibit H-236; hearings before the Special Subcommittee on Education of the House Committee on Education and Labor, statement of P. Muirhead, (Continued)

The essential elements in the accrediting concept are the standards established by each agency for the guidance of its members. For example, the Association of Independent Colleges and Schools had determined that the following areas are important in appraising an applicant/school:[178]

1. each institution must define its objectives completely;

2. the educational program should match the objectives;

3. the ownership and control of the institution must be clearly stated in appropriate publications, it should have adequate financial resources to meet its responsibilities, and it should keep adequate records;

4. the faculty must meet certain educational requirements;

5. the chief executive officer should be responsible for supervision of the school and each school should have sufficient counseling and clerical staff for its needs;

6. the library must meet the needs of the educational program;

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[177] (Continued)

deputy Commissioner of Education, HEW (July 1974), pp. 21-22, Exhibit H-188; Smith, The Creative Service, Baxandall Company (May 1974), Exhibit E-126. *See also* Part I, Section II-B, *supra*.

[178] Operating Criteria for Accredited Institutions, AICS (June 1973), p. 38 *et seq.*, Exhibit F-2, document 3. Similar guidelines for the National Home Study Council, National Association of Trade and Technical Schools, and Cosmetology Accrediting Commission will be found in Exhibits F-34, F-12, and F-55, respectively. The standards and procedures applied by proprietary accrediting agencies are modeled after those utilized by public and non-profit agencies. *See* the accrediting materials for Medical Laboratory Schools (Exhibit F-65), Forestry Schools (Exhibit F-67), Architecture Schools (Exhibit F-69), Dental Schools (Exhibit F-70), Nursing Schools (Exhibit F-71), Engineering Schools (Exhibit F-73), Business Schools (Exhibit F-75), and Medical Education Schools (Exhibit F-76).

7. tuition rates must be clearly set forth in appropriate publications;

8. the buildings, classrooms, equipment, furniture, grounds, instructional devices, machinery, etc., must be appropriate for and contribute to the educational objectives of the program; and

9. admissions policies are consistent with the school's objectives and state law.

In large part, accreditation is a purely private process which derives much of its reputed advantages from being beyond the scope of federal regulation.[179] The federal government's role is limited to listing accrediting agencies and publication of criteria for the selection of those agencies.[180] These criteria generally establish broad guidelines that are technical and administrative in nature and avoid direct requirements relating to the individual accredited school's educational quality or business probity. The most recent criteria provide that in order to be an accrediting agency recognized by USOE pursuant to its statutory responsibility, the agency must possess certain attributes. These attributes are largely ministerial in nature.[181]

Whatever one may conclude about the efficacy of the accrediting agency standards and procedures set out above in achieving "educational quality," the record is clear that such standards and procedures do not and cannot serve the consumer protection interests at issue in this proceeding. Commentators are uniform in their judgments concerning the limited purpose and role of private accreditation:

> Accreditation can and does speak to the consumer up to a point and that point is that the institution or program is providing the very best quality it is capable of providing given its human and financial resources. But, accreditation cannot authorize the establishment of institutions, nor can it force them to cease

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[179] Hearings before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare (September 1974), testimony of R. Kirkwood, Executive Director, Federation of Regional Accrediting Commissions of Higher Education, Exhibit F-49, document 2, and testimony of F. Dickey, Executive Director, National Commission on Accrediting, Exhibit F-49, document 3; see also hearings before the Special Subcommittee on Education, Exhibit H-188, testimony of H. Orlans, National Academy of Public Administration Foundation, p. 206 et seq.

[180] 38 U.S.C. Section 1653(a); 20 U.S.C. Section 1141(a).

[181] These attributes are described as follows:

1. Functionality: the accrediting agency should be regional or national in its scope of operations and maintain a clear definition of its activities, both as to geographic area and nature and type of institutions or programs covered. It should have adequate administrative and financial support to carry out its accrediting programs, and should have access to a sufficient number of competent and knowledgeable personnel to participate on visiting teams, on its decision-making committee, and as consultants. The agency shall also have developed clearly written procedures for each level of accreditation status, including institutional or program self-analysis and on-site reviews by a visiting team.

2. Responsibility: the agency must show a clearly identified need for accreditation by the agency in the field in which it operates; responsiveness to the public interest; adequate provisions for due process in accrediting procedures; demonstrated capability and willingness to foster ethical practices among the institutions or programs which it accredits; and a program of evaluation of education standards.

3. Reliability: the agency should demonstrate wide acceptance of its policies, procedures, and decisions; regular review of its standards and procedures; experience as an accrediting agency; and representation in its policy and decision-making bodies of the community of interests directly affected by the scope of its accreditation.

4. Autonomy: the agency must demonstrate the autonomy and independence of its decisions from outside influences.

35 Fed. Reg. 30041 (August 20, 1974), 45 C.F.R. Section 149, subpart A, Exhibit F-31. A proprietary accrediting agency must undergo a periodic review--usually every five years--to evaluate its continued adherence to these criteria.

> to operate. It can only work to help improve those institutions in existence that sincerely seek consultation and service.
>
> ...It should be noted that accreditation cannot be a surrogate ministry of education..., nor can accreditation serve as a protective agency to respond to every consumer complaint.[182]

The Commissioner of Education concurred in this assessment of accreditation in his testimony before the Senate's Permanent Subcommittee on Investigations:

> Accrediting agencies are committed philosophically to stimulation of institutional or programmatic uplift through a traditional pattern of expert peer review. They have no legal authority to require compliance; they work instead by persuasion to maintain understanding and acceptance of their role and function by their constituents and the general public. All accrediting agencies are limited in funds and staffing, and rely heavily on volunteer labor from member organizations.[183]

It would seem therefore, that accreditation is not intended to perform regulatory or protective functions[184] as is well recognized by the accrediting agencies themselves.[185] Its objectives are to encourage and cultivate voluntary commitments to educational standards by a process of evaluation that occurs over time. Accreditation does not indicate that at any given time a particular school conforms to these standards; it only indicates that the school is striving to meet the standards.[186] This basic premise underlies the activity of all proprietary accrediting agencies.[187]

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[182] Testimony of F. Dickey, Executive Director of the National Commission on Accrediting before the Subcommittee on Education of the Senate Committee on Labor and Public Welfare (September 1974), Exhibit F-49, document 3, p. 4-5.

[183] *Guaranteed Student Loan Program*, Committee on Government Operations, U.S. Senate (November 1975), p. 277, Exhibit H-236. *See also* Orlans, *Private Accreditation and Public Eligibility*, Brookings Institution (October 1974), p. 463-64, Exhibit D-21.

[184] *Reducing Abuses in Proprietary Vocational Schools*, Report No. 93-1649, Committee on Government Operations, U.S. House (1974), p. 30-34, Exhibit H-168.

[185] Testimony of R.A. Fulton, Executive Director of the Association of Independent Colleges and Schools, Tr. 6990.

Moreover, accrediting agencies are not organizationally equipped to perform the regulatory functions that are integral to avoid consumer abuses. Accrediting agencies have limited staffs and limited funds.[188] More important, however, is the very structure of the evaluation process itself. Accreditation consists of the school's own assessment of its virtues followed by a brief on-site visit by the accrediting association. This process occurs every four to six years, with member schools required to submit a brief annual report to supplement the review process.[189] Even if the accrediting bodies had the authority and inclination to impose independent standards for consumer protection, the accrediting review process is largely incapable of either ascertaining whether violations have occurred or insuring that they will not occur.[190] A cursory review of the documents generated by the proprietary school accrediting process amply demonstrates that the accrediting evaluation procedure is neither sufficiently thorough nor frequent to offer adequate protection to vocational school consumers.[191] After its investigation of accredited business schools in Florida, one of HEW's task forces investigating default problems concluded:

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[186] Testimony of R. Fulton, Executive Director of AICS, before the Senate Committee on Labor and Public Welfare's Sub-Committee on Education (September 1974), p.12, Exhibit F-49, document 1.

Even where the accrediting standards speak to business practices, they are often so vague that determinations of adherence to the standard would require detailed case-by-case review. For example, the National Home Study Council cautions its member schools that "each advertisement and piece of promotional literature written or used by a school must be completely truthful and must not give any false, misleading or exaggerated impression." Business Standards, NHSC, Section IA.1, Exhibit F-34.

[187] See testimony of W. Fowler, Executive Director, NHSC, Tr. 9049; testimony of D.W. Holbrook, Commissioner of Accreditation, NHSC, Tr. 9019; testimony of W. Goddard, Executive Director, NATTS, Tr. 9166; testimony of R. Fulton, Executive Director, AICS, Tr. 6990; testimony of B. Ehrlich, counsel to NATTS, NHSC, and CAC, Tr. 9272.

[188] Even when an accrediting agency acts to withdraw the accredited status of a member school it often finds its ability to act hindered by court action. Loss of accreditation means loss of federal subsidies and accredited schools do not easily or voluntarily forego the mantle of accredited status. In one series of cases AICS found a $75,000 litigation expense to be a serious burden. Testimony of R.A. Fulton, Executive Director of AICS, Tr. 8981-8983; see also testimony of W. Fowler, Executive Director of NHSC, Tr. 9100.

> The most serious, and perhaps least justifiable, practice of the schools under review is the consistent failure to abide by the standards of the accrediting agencies, which are allegedly required for continued accreditation, and therefore, eligibility in federal programs. In every accredited business school reviewed, multiple violations of the AICS [Association of Independent Colleges and Schools] operating

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[189] Annual Reports were obtained by use of subpoenas duces tecum to each major proprietary accrediting organization by the Commission's staff and appear on the public records as exhibits, Exhibit B-29 (National Home Study Council), B-30 (National Association of Trade and Technical Schools), and B-31 (Association of Independent Colleges and Schools).

[190] Visitation to Austin Schools, Austin, Texas, Exhibit A-16, document 2; letter from T.H. Bell, Commissioner of Education to Senator E.M. Brooke (May 8, 1974), Exhibit H-84; Status of Task Force Review of Florida Proprietary Vocational Schools' Participation in the GSLP (1975), p. 3, Exhibit H-201.

[191] As part of its investigation preceding the proposed trade regulation rule, the Commission's staff issued subpoenas duces tecum to the major accrediting associations to obtain copies of self-evaluation reports, examiners reports, and final determination letters. These materials can be found at Exhibits C-37 (Association of Independent Colleges and Schools), F-61 (National Association of Trade and Technical Schools), and F-64 (National Home Study Council); see testimony of S. Soehnel, San Mateo County Legal Aid Society, Tr. 3994.

> criteria occurred in the catalogue inclusions or omissions, refund requirements, enrollment contracts, and tuition irregularities, ad infinitum. The school's [sic] persistent failure to comply with the accrediting agency's requirements illustrates deficiencies in the present accrediting process.[192]

Failure to ascertain, let alone prevent, violations of standards that might assist consumers is a fairly common occurrence among accrediting agencies. The Executive Director of the National Home Study Council, after describing the purpose of accreditation to be largely limited to issues of educational quality, noted that review of correspondence school advertisements for their compliance with NHSC standards was somewhat limited:

> Mr. SHELDON: ...How often do you review members school's advertising?
>
> Mr. FOWLER: Well, at least every five years. If there is a problem that is brought to our attention about advertising, then we will look into it at that time. And, of course, I buy magazines. I listen to the radio. I watch some TV, as do all the other members in the Council... .[193]

Similarly, despite the fact that over three-quarters of all students enrolled in NHSC member schools were enrolled by sales agents,[194] NHSC does not actively review or pursue the sales activities of member schools in any organized fashion.[195] This problem is not confined to correspondence schools and appears in the residential school accrediting process as well.[196] The types of complaints registered against accredited schools are the same as those filed against unaccredited schools and we have no evidence to indicate that accreditation has served to reduce the form, scope, or content of such complaints.[197]

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[192] Status of Task Force Review of Florida Proprietary Vocational Schools' Participation in the GSLP (1975), p. 3, Exhibit H-201.

[193] Testimony of W. Fowler, Tr. 9092-93. It hardly needs to be emphasized that correspondence schools, by virtue of the very nature of their programs, engage in extensive media advertising; see also the testimony of W. Goddard, Executive Director, NATTS, Tr. 9262-9266.

[194] See Part I, Section V-B, supra.

[195] Testimony of W. Fowler, Tr. 9098-9102, 9117-18.

[196] Testimony of R. Fulton, Executive Director, AICS, Tr. 9005-06.

It seems clear that accrediting agencies are not structured to implement, supervise, review, or enforce the type of requirements contained in the proposed Trade Regulation Rule. In its study of the relationship between federal subsidy programs and eligibility status for participating schools, the Brookings Institute concluded that:

> Accrediting agencies are not policing bodies. They make no overall judgment about whether a school or program meets the bulk of their standards, and that is their major judgment. They do not monitor and enforce obedience to all standards or the degree of compliance with any single standard. They do not disclose the standards or the degree of compliance with any single standard. They do not disclose the standards with which a school does not comply. They do not exist to represent students and defend their interests. It is not their obligation to see that a school abides by any limitations or conditions which the government may set for its continued eligibility.... Yet the policing prowess of accrediting agencies is so light that, coupled with OE's slight capacity for independent enforcement, much mischief has occurred before the situation was rectified.[198]

The deficiencies of the proprietary schools' accrediting process became obvious when accreditation was made the prerequisite to participation in federal educational programs. Whatever merit the peer-review system may have in a wholly voluntary context, the infusion of federal monies made it mandatory for schools to obtain and keep accredited status.[199] Despite the fact that the very existence of federal money served to cause a further deterioration in schools' business practices, USOE continued to defer to accrediting agencies as the primary focus for reviewing and evaluating proprietary schools. Even after serious questions have been raised concerning advertising, recruitment and enrollment practices of accredited schools, the acting Commissioner of Education noted:

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[197] Indeed, although a minority of all schools are accredited, over 70 percent of all complaints on the public record in this proceeding are against accredited schools. See Exhibit J-1; see also, the testimony of P. Muirhead, Deputy Commissioner, Bureau of Postsecondary Education, HEW, before the Special Subcommittee on Education, House Committee on Education and Labor (July 1975), Exhibit H-90, document 7, in which he describes the abuses by accredited schools portrayed in the Boston Globe articles on proprietary schools.

[198] Orlans, Private Accreditation and Public Eligibility (1974), p. 464, Exhibit D-21.

> As appears from the foregoing discussion, under the prevailing statutory scheme, monitoring with respect to recruitment and educational training policies of proprietary vocational schools is not directly carried out by the Office of Education. Such monitoring is properly a function of nationally recognized accrediting agencies, identified through the listing procedures described above.[200]

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[199] Competition among schools for the federal dollars that are so essential to survival has further hampered the accrediting organizations ability to be an effective guarantor of educational and business standards. In one instance, AICS' accrediting review led it to conclude that accreditation should be withdrawn from a group of Texas-based schools. The schools filed a multi-million dollar damage suit to prevent the action and succeeded in obtaining a restraining order preventing the implementation of the AICS decision. Hearings before the Special Subcommittee on Education, Committee on Education and Labor, U.S. House (July 1974), p. 73, Exhibit H-188. See also materials relating to NATTS' accrediting procedures, and application for accreditation of Harvard Automation-Business College, Exhibit F-91.

[200] Letter from P. Muirhead, acting Commissioner of Education to Senator E.M. Brooke (May 8, 1974), Exhibit H-84.

The deference shown by USOE to accrediting agencies is at times remarkable. USOE refers all consumer complaints to accrediting agencies for disposition. By USOE's own measurement approximately 71 percent of these complaints were determined to be unfounded and resolved in favor of the school in question. Included among the 29 percent resolved in favor of students were a large number where the school had erroneously calculated the refund due under its own referral policy. Hearings before the Special Subcommittee on Education of the House Committee on Education and Labor, p. 267, Exhibit H-188; A Report on the Accreditation Policy Unit's Procedures for Handling Student Complaints (August 1974), Exhibit H-198. Indeed, it continues to argue for increased reliance. Institutional Eligibility and Consumer Abuses: A Status Report and Summary of 1974 Activities, Including a Report on the Boston

(Continued)

There is no evidence that such monitoring is in any regard more efficient, thorough, or effective than it was when accreditation was a purely voluntary peer-review mechanism. It is not surprising, therefore, that commentators have begun to call for the separation of accreditation and eligibility for federal programs and a substitution of some system that would tie the eligibility to a more rigorous review mechanism.[201]

The purpose of this review is not to draw any conclusions about the validity or efficacy of accreditation per se. Rather our purpose is to present the Commission with a factual portrayal of how the accrediting process works and the ways in which federal entitlement has been attached to the status of accreditation. Accrediting agencies are not equipped to provide consumers with the protections and remedies that are essential if false, deceptive and unfair practices are to be prevented and avoided. Nor can we say that the U.S. Office of Education has been sufficiently vigorous in its oversight of the activities of accrediting agencies to warrant the conclusion that consumers may look there for relief.[202] On the contrary, reliance on accreditation by USOE has worked at times to the detriment of student/consumers and left them without adequate safeguards or protections.[203]

E. Private Remedies

In previous portions of this section, we have detailed the type of protection consumers can expect from state, federal and accrediting agency standards and procedures. The record shows

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200 (Continued)

Globe Series on Proprietary Vocational Schools and the System for Monitoring Consumer Abuses, USOE/AIES (January 28, 1975), Exhibit H-234.

[201] Orlans, Private Accreditation and Public Eligibility, Brookings Institute (October 1974), Chapter L, Exhibit D-21; see also Accreditation and Institutional Eligibility, HEW/USOE Task Force, chaired by Frank Newman (1971), "The Pro's and Con's of Linking Eligibility to Accreditation," statement of H. Orlans, before the Special Subcommittee on Education, hearings, at p. 214, Exhibit H-188.

[202] "Selected Listing of AIE Staff On-Site Investigations of School Practices During the Period 1970-1974," USOE/AIES, in Hearings before the Special Subcommittee on Education, at 226-66, Exhibit H-188.

[203] Wentworth, "For Thousands, Accreditation Has Spelled Deception," Washington Post (June 26, 1974) part of a series of articles entitled "The Knowledge Hustlers," Washington Post (June 23-26, 1974), Exhibit D-27.

that these standards and procedures are not viable in offering remedial relief to consumers. In the following paragraphs, we describe the efficacy of consumers' attempts at self-help.

The record shows that if a school deals unfairly or deceptively with a consumer, there is little if anything the consumer can do about it as an individual's private rights of consumer action are limited, impractical, and ineffective. When this is added to the inability of a consumer to obtain relief from other sources, the vocational school consumer is left defenseless.

There are two types of situations in which a dissatisfied consumer might be found. In one, the consumer has paid the school at least in part, but becomes dissatisfied and wants a refund. This could happen if the student graduates but is unable to find a job. Or it could happen when a student, dropping out in disgust, only gets back a minimal refund because of harsh refund policies. In either case, the consumer wants to sue the school to get some or all of the money back. This situation will be described as the "plaintiff's context."

The other situation is where the school is suing the student on the student's contract. This can arise when the student drops out and stops paying because of dissatisfaction with the course. While the student is not seeking to recover what he has already paid, the individual does not want to pay anything further to the school. This context could also arise when the student graduates, does not get a job, and then does not want to--or sometimes financially cannot--pay off a loan that becomes due. The student could owe this money to the school, a lender, or a guarantor such as HEW. This situation will be called the "defendant's context."[204]

In the plaintiff's context, a suit may never be brought for several reasons. First, the consumer has to recognize that the individual has a cause of action that can be adjudicated through the legal system. A number of attorneys have mentioned that many disgruntled vocational school students do not realize they could bring suit to regain lost money.[205] Often students do not even know they have been cheated. They will blame their inability to get a job on their own ineptitude when in fact no one from the school is getting a job. If they do feel that they did not get what they contracted for, they will not realize that fraud or breach of contract are causes of action that can be brought in court.[206] A previous discussion has shown that most people with legitimate and significant problems with vocational schools do not even complain.[207] Thus it is not surprising that many defrauded consumers do not sue.

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[204] See testimony of Allen R. Fierce, attorney, Cook County Legal Assistance, Tr. 7271.

[205] Op. cit., Tr. 7275; Testimony of Bruce Berwald, attorney, San Mateo Legal Aid, Redwood City, California, Tr. 3974.

Once a consumer decides to sue, the first difficulty encountered is in getting an attorney. The cost involved is often prohibitive. Many vocational school causes of action would run in the vicinity of $1,000. Not many attorneys would take such a difficult and small case on a contingency basis. On the other hand, attorney's fees may prove too great a gamble to the consumer.[208]

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[206] One legal aid attorney described this phenomenon:

> A purchase of merchandise that does not meet the salesmen's representation is usually not challenged in court. We find this frequently when we interview people for other matters. During the course of the interview this comes out. They had no idea about legal recourse. It is not bred in these people to include this kind of situation within the realm of possible legal action.
>
> They think that since the school never actually promised a job, but merely said job opportunities were "fantastic," or that 90 percent of the people who took their course got good jobs paying from $200 to $500 a week, a law suit will do them no good, especially so when they have nothing the salesman said in writing and can't [sic] he was lying about these claims.

Testimony of Allan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7276.

[207] See Part I, Section IV-D, supra.

[208] One attorney described this problem:

> Imagine that you are an attorney in private practice and are approached by a young man who says he wants to get back part of the $900 he paid for a trade school course he just completed because he doesn't think it was worth it. He mentions something about a salesman who lied about job and salary opportunities. At that point in time the contract was signed.
>
> Would you take the case? What would you charge?

(Continued)

208 (Continued)

> My guess is that you probably wouldn't take the case, or instead you would inform him that your fee would not make a lawsuit worthwhile to pursue.

Testimony of Allan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7277.

Another attorney was more specific:

> Mr. Sheldon: You mentioned the difficulties in individual causes of action with $1900. In a normal case what retainer would an attorney expect in a case like that?
>
> Mr. Hendrickson: It is not hard to calculate the expense. We are talking about an individual, say, suing any vocational school, talking about the initial filing fees of such a suit, which may run, say, from 20-40 dollars. You are talking about discovery costs, and let's assume that the cost of getting transcript of a deposition to prepare for trial is $200, which is in my experience a reasonable amount. I would think the student would want to take the deposition of the original sales officer of the school. He would want to take the depositions of his instructors. That would be 5 people. We say depositions of the management of the school. Seven people at $200 a crack. We have got $1400 in simple discovery fees and $40 in filing fees. Add $60 in other disbursements. You have got $1500. Assuming the case would go go to trial, I don't think you are conceivably talking about less than $400 in attorney's fees, and I think you are probably talking about something closer to a 1,000 or so, so you can see the costs of an individual prosecuting such a claim very rapidly exceeds the amount of the claim. We are not talking about an individual, you know, an individual suing in a personal injury case for a $100,000. We are talking about whether it is economically possible for a person of limited means to sue for $1900. Until you have a large number of people and an attorney willing to take it on a largely contingent basis the possibility of achieving any legal remedies are, I think, so minimal as to be ineffective.

Testimony of John Hendrickson, attorney to former students of Greer Technical Institute, Tr. 8798-99.

One solution may be to bring a class action.[209] While there have been a few such actions brought recently,[209] there are numerous obstacles to this approach. In addition to recent court rulings that restrict the use of this procedure, there is a problem of a sufficient common basis for all of the claims.[210] Thus, for a class action to be even conceivable, an individual would have to find a number of others who wanted to join in a class suit who had approximately the same difficulty with the school.

Free legal services provided under public and private programs are not an effective alternative either. Income guidelines for eligibility for legal services are very strict, excluding all but the poorest.[211] Moreover, many legal services offices do not handle cases which could conceivably be done by a private attorney on a contingency basis. Instead the case will be referred to several private attorneys before the legal service office will handle it.[212] When a legal services office does take the case, often it must take a lower priority for overworked attorneys compared to such emergency cases as evictions.[213]

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[209] Op. cit., Tr. 8790; testimony of Sonja Soehnel, attorney, San Mateo Legal Aid, Tr. 3988; testimony of Hollis Young, Legal Services Attorney, Boston Legal Assistance Project, Tr. 364; San Mateo County Legal Aid Society press release: Class Action Consumer Fraud Suit Against Career Academy and U.S. Commissioner of Education (June 26, 1974), Exhibit G-113; Complaints filed against Career Enterprises, Inc., in Superior Court of California and U.S. District Court (Kansas), Exhibit D-266.

[210] A private attorney with experience in this area stated:

> But in this--also, the question whether there is a sufficient common basis for all such claims. I know in putting this law suit together they were fortunate. We were given a large number of students at the same time in the same class. I had other parents and students call me about the filing of this law suit and saying that their children or they themselves had been to Greer in the following term after my clients had graduated, and the same old story was going on, and wouldn't I please take the case, and I had to explain the reason I was able to do it was because of the economics of scale. Each of them could chip in a relatively small amount of money. And the problem of proof was reduced because of the common questions of fact in the case. We couldn't add new individuals in that case. If they wanted to prosecute a suit on their own, they were looking at a large expenditure of time, energy, and money relative to the amount they could expect to gain.

Testimony of John C. Hendrickson, attorney to former Greer Technical Institute students, Tr. 8800, 8801.

[211] Testimony of Allan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7278; testimony of Bruce Berwald, attorney, San Mateo Legal Aid, Redwood City, California, Tr. 3983.

Appearing as one's own attorney is not feasible either. Many of the consumers involved here are not sophisticated enough for this procedure. Moreover, *pro se* divisions of small claims courts often have jurisdictional maximums far below the damages in question.[214] Even if a consumer takes this route, it can be a frustrating experience, with continuances and the like. Even if a judgment is won, executing it is often not a simple matter.[215] It becomes virtually hopeless if the school is an out-of-state corporation or bankrupt.[216]

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[212] One legal services attorney discussed the effect of this procedure:

> The second problem here is the prohibition on legal services attorneys to sue for substantial money damages.
>
> The bar associations, you see, don't want us stealing fee generating cases from the private bar, so in our office, if the amount sought in a suit by a client is over $500, we must refer the client to at least two private attorneys who decline the case before we can take it. We have a referral system which we use.
>
> Now, it's my experience the practical effect of this rule is that the client frequently gives up the search for an attorney in frustration before completing the hunt for an attorney who will take his case.
>
> Testimony of Allan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7278.

[213] *See* testimony of Allan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7276; testimony of Bruce Berwald, attorney, San Mateo Legal Aid, Redwood City, California, Tr. 3284.

[214] *See* testimony of Leroy Broesder, Sr., Vice President of Administration, The Spartan School of Aeronautics, Tr. 7298.

[215] One legal services attorney described this:

> Now, if at that point he gets a judgment, then, of

(continued)

In the defendant's context, the consumer is not much better off. First of all,[217] the consumer may be being sued by the United States Government.[217] Moreover, the suit may be in an inconvenient venue forcing the consumer to lose a default judgment.[218] Just

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215 (Continued)

> course, he has to take all the regular steps that any collection attorney would go through in order to collect his money.
>
> He might have to use a wage deduction summons, he might have to garnish a bank account and these procedures, I think, are the ones that trip up the ultimately successful litigant in the Pro Se Court.
>
> You might win the litigation, but collecting your money is another thing.
>
> Q. How about a student who--who has an experience with an out-of-state school? Does that pose any problems?
>
> A. Right, well, it would pose problems for use as legal services attorneys as far as litigation. It's not easy to sue an out-of-state school in the Circuit Court of Cook County, going through the process of having summons served, using the long arm statute, fighting various motions that the school would bring in challenging jurisdictions challenging venue possibly. It's a problem.

Testimony of Allan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7299.

[216] See, e.g., testimony of John Marshall, student, Tr. 7099.

[217] For a discussion of how FISL paper works, see Part I, Section VIII-C(2), supra. Moreover, just the fact that the United States government is suing may intimidate a consumer from bringing forth defenses involving the school.

[218] One witness described this phenomenon:

> Number one, the suit is heard in Chicago One--initial problem for many persons sued by trade or vocational schools is that, without regard to where the defendant lives, the suit is filed in the First District of the Municipal Department of the Circuit Court of Cook County. This is the Civic Center.

(Continued)

as onerous to consumers as the potential for default judgments is the consumer's inability to get an attorney and respond to the action brought against the the student in a timely fashion.[219] Even if the consumer locates an attorney in time, it is unlikely the attorney will take the case. Added to the financial problems discussed in the plaintiff's context is the additional factor that a contingency fee is not possible.

If the consumer does get to court in either the plaintiff's or defendant's context and somehow manages to afford a costly trial, the consumer still has to win the case. Often the consumer must show that oral misrepresentations have been made. But this will turn into a credibility contest between the salesperson and the student. Even if the court believes the student's view, the individual may not win. Attorneys have testified that their experience with state courts is such that many sales misrepresentations may not be actionable. Sales presentations often do not guarantee jobs but leave an image in the consumer's mind that if the course is taken, a job is ensured. But courts may not find this image-making evidence enough of a fraud to rescind the enrollment contract or award damages.[220] Moreover, some claims made by sales agents may be virtually impossible to disprove for a private litigant with limited resources. For example, an individual consumer is not in a position to survey

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218 (Continued)

> In many cases this is done pursuant to a venue clause in the contract; in other cases it is just done as a matter of convenience to the school and its attorney.
>
> In either event, defendants who reside in suburban Cook County, nearby and even distant counties, frequently find it very inconvenient to defend these suits.
>
> Default judgments are common and I'd like to suggest that you can ask the trade and vocational schools to document their collection litigation to verify this. I think by and large they get default judgments against the people they are using.

See, e.g., testimony of Allan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7281.

[219] One attorney testified that frequently summons are serviced on the defendant only a few days before the return date. See op. cit., Tr. 7282.

[220] See, e.g., testimony of Bruce Berwald, attorney, San Mateo Legal Aid, Tr. 3974.

graduates of a course or local employers to show that most graduates of a school cannot get jobs.[221]

Thus the individual litigant is in a virtually hopeless situation in either the plaintiff's or defendant's context. If a consumer is defrauded, the individual can not protect himself. The only recourse is help from some third party--a state attorney general's office, a state approval agency, or an accrediting association. The individual may never know to turn to these agencies,[222] and, if the consumer does, they will often be ineffective or unwilling to help the individual with the problem.[223] It is in this context that staff believes the Commission must take action and adopt the Rule recommended here.

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[221] See testimony of Lewis Winarsky, Assistant Attorney General, Office of the Attorney General, State of Ohio, Tr. 8540; testimony of Allan R. Fierce, attorney, Cook County Legal Assistance, Tr. 7287.

[222] See Part I, Section IV-D, *supra*.

[223] See Part I, Sections VIII-B and D, *supra*.

PART II - CONCLUSIONS AND RECOMMENDATIONS AS TO FINAL TRADE REGULATION RULE

I Introduction

In Part I of this Report we provided an analysis of the evidentiary material available on the public record in this proceeding. It is our view that this material demonstrates quite clearly that proprietary vocational schools engage in a number of false, deceptive, and unfair acts and practices that have been and are causing serious harm to consumers. The record also shows that these practices have not been checked by any public or private agency or organization and that the prospects for continued use of these practices are substantial.

Because it is our view that the Commission must act forcefully to proscribe certain of these practices and to prevent their reoccurrence, we are recommending a trade regulation rule that is aimed at defining those acts and practices which are unfair and deceptive as well as preventing the most troublesome aspects of proprietary schools' enrollment, solicitation, and advertising techniques. In brief the Rule we are recommending provides:

1. a requirement that printed or broadcasted job and earnings claims be accompanied by certain qualifying disclosures;

2. mandatory disclosure of drop-out rates for all schools, and disclosure of placement and salary statistics for schools that engage in job and earnings advertising;

3. an affirmation period during which the student receives the disclosures required by the Rule and makes a decision on whether to enter the course; and

4. a pro rata refund policy calculated on a class-by-class basis for residence schools and a lesson-by-lesson basis for home study schools.

While the Bureau has modified the originally published proposed Rule to accomodate comments and suggestions concerning ambiguities and technical difficulties and to facilitate compliance, the essential provisions of the published Rule have remained intact.

In this second part of the Staff Report, we provide the texts of both the Rule we are recommending and the Rule originally published by the Commission.[1] This is followed by a section-by-section description of the Rule we are recommending with references to changes that have been made in the Rule as originally published. In Section IV, we provide a detailed discussion of the factual and policy considerations that support the adoption of the recommended Rule, with a subsection devoted to each provision of the Rule as well as the definitions. This section also provides a discussion of those arguments we found persuasive in making alterations in the Rule, and those that we rejected as non-persuasive. It also includes a discussion of several specific industry arguments not addressed elsewhere in this Report.

This Section is followed by a discussion of the effects of the proposed Rule on consumers, small businesses, and the market economy both in terms of its costs and the benefits to be derived from establishing standards for certain business practices. Section VI follows with a discussion of certain industry arguments which are more general in nature and relate to the propriety or adequacy of F.T.C. activity in this field.

Finally, in Section VII we discuss the findings of the presiding officer and respond to issues raised by his report.

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[1] The Commission originally published the proposed Trade Regulation Rule Concerning Advertising, Disclosure, Cooling-Off, and Refund Requirements Concerning Proprietary Vocational and Home Study Schools on August 15, 1974 (39 Fed. Reg. 29385). Due to changes in the Commission's Rules of Practice, the Commission republished the Vocational School Rule on May 15, 1975 (40 Fed. Reg. 21048) with one change--adding "affecting commerce" to the preamble. The version included herein is the May 15, 1975 version.

II. The Trade Regulation Rules

In this Section of Part II, we are providing the full text of both the Rule we are recommending and the Rule originally published by the Commission on May 15, 1975. Both Rules adopt the same format of delineating definitions first, followed by the primary substantive provisions of the Rule. Since the Rule would become Part 438 of 16 C.F.R. if adopted by the Commission, the definitions are designated 438.1, and the Rule provisions, 438.2.

A. Revised Rule Recommended by the Bureau.

438.1 - Definitions

For purposes of this Rule the following definitions shall apply:

(a) Buyer. Any individual who seeks to enroll in a course. For purposes of this part, buyer shall not include any individual whose enrollment in a course has been sponsored or required by a government agency, charitable organization, labor union, school (other than a seller), or the individual's employer, when such agency, organization, union, school or employer has identified and selected the course to be taken by the individual.

(b) Enrollee. A buyer who delivers a signed Disclosure Form to seller and attends at least one residence school class, or submits at least one correspondence lesson.

(c) Course.

(1) The term "course" means a residence, correspondence, or combination program of study, education, training, or instruction consisting of a series of lessons and/or classes which consist of several parts which are coordinated, arranged, or packaged to constitute a curriculum or program of instruction and sold collectively so long as the course purports to prepare or qualify individuals, or improve or upgrade the skills individuals need, for employment or training in any occupation, trade, or in job positions requiring mechanical, technical, business, trade, artistic, supervisory, clerical, or other skills.

(2) The term "course" shall not be construed to include a program two years in length or longer which consists of accredited college level instruction that is generally acceptable for credit toward a bachelor's degree.

(3) The term "course" shall not be construed to include any course whose total contract price is less than one hundred dollars ($100), provided buyer enrolls in no other course with seller during the calendar year, and that seller does not offer any other "course," as defined by this paragraph, for one hundred dollars ($100) or more.

(d) Total Contract Price. The total price paid or to be paid by the buyer for the property or services of the seller, including any and all registration fees, equipment, ancillary services such as, but not limited to, charges for room and board which are the subject of the contract, and any finance charges determined in accordance with the Federal Reserve Regulation Z (12 C.F.R. 226.4).

(e) Seller. Any individual, firm, corporation, association, or organization engaged in the operation of a privately owned school, studio, institute, office, or other facility which enrolls seventy-five enrollees or more in a calendar year and offers residence, correspondence, or combination courses.

(f) Graduate. Any enrollee who fully completes all lessons or classes required by the seller and discharges any other requirements or obligations established by the seller as prerequisites for completing the full course of study.

(g) Fail to Complete. Any enrollee who does not fully complete all lessons or classes required by the seller as constituting the full course of study and who otherwise cancels by any of the methods prescribed in paragraph (g) of Section 438.2 of this part shall be deemed to have failed to complete his course.

(h) Actively Enrolled. Any enrollee who is neither a graduate nor has failed to complete his course of study shall be deemed to be actively enrolled.

(i) Base Period. A six month period from January 1 through June 30, or from July 1 through December 31.

(j) Most Recent Base Period. The most recent base period, not including any base period that ended within four months of the time disclosures are required to be made pursuant to paragraphs (a) or (b) of Section 438.2 of this part.

(k) Most Recent Graduating Class. That class of graduates which most recently completed its course, but not including any graduating class which completed its course within four months of the time disclosures are required to be made pursuant to paragraphs (a) or (b) of Section 438.2 of this part.

(l) New Course. Any course which has substantially different course content and occupational objectives from any course previously offered by seller and which has been offered for a period of time less than four (4) months since:

(1) the graduation of one class, if a residence school course with a fixed class schedule;

(2) the completion of a base period, if a residence school course without a fixed schedule; or

(3) the completion of two (2) base periods, if a correspondence school course.

(m) Combination Course. Any course that consists of both correspondence lessons and residence classes. As described in Section 438.2 of this part, a combination course shall be treated as a correspondence course for the purposes of paragraphs (a), (b), and (c) of Section 438.2, but shall be subject to paragraph (h) for the purposes of paragraphs (e), (f), and (g) of Section 438.2.

(n) Constructive Notice. An enrollee shall be deemed to have provided constructive notice of his intention to withdraw from his course:

(1) For residence courses with fixed class schedules, by failing to attend residence classes or failing to utilize residence instructional facilities for a period of seven days or fifteen percent (15%) of the course, whichever is less;

(2) For residence courses without fixed class schedules, by failing to attend residence classes or failing to utilize residence instructional facilities for a period of sixty (60) days;

(3) For correspondence courses of instruction, by failing to submit a lesson for a period of 120 days.

(o) Course Without A Fixed Class Schedule. A course which does not set precise dates for class admissions, where enrollees do not attend classes by a prearranged schedule, or where there is not a precise graduation date, provided that enrollees are only financially obligated for those times when they attend the course.

(p) Course With A Fixed Class Schedule. A course that is not a course without a fixed class schedule.

(q) Enrollment Contract. Any agreement or instrument however named evidencing an obligation binding the buyer to purchase a course from the seller, provided that such agreement or instrument is entered into after the effective date of this Trade Regulation Rule.

(r) Job or Earnings Claim. Any express or implied specific or general job or earnings claim.

(s) General Job or Earnings Claim. Any claim or representation concerning the general conditions or employment demand in any employment market now or at any time in the future or the amount of salary or earnings generally available to persons employed in any occupation.

(t) Specific Job or Earnings Claim. Any claim or representation concerning the specific employment opportunities available to buyers or the demand for buyers who purchase seller's course, or specific amount of salary or earnings available to buyers who purchase seller's course.

438.2 The Rule

In connection with the sale or promotion of any course in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, it is an unfair or deceptive act or practice for any seller to fail to comply with the following requirements:

(a) Job or Earnings Claims.

All written or broadcast job or earnings claims shall be accompanied by the following disclosures:

(1) "Notice: What we just said about jobs or earnings is not necessarily a prediction or guarantee that you will get the kind of job we train you for. You may want to see how our previous students did. So we'll tell you about them here."

(2) The disclosures specified by subparagraph (b)(3) of this section. Provided, however, That all written or broadcast general job or earnings claims made in connection with a new course instead shall be accompanied by the disclosures specified by subparagraph (b)(7) of this section.

Any disclosure prescribed by this paragraph must be made in the same form and with the same emphasis, including the same size and type of print, where applicable, as the most conspicuous job or earnings claim being made.

(b) Affirmative Disclosure of Graduation Rate and Placement Record.

(1) When a buyer signs an enrollment contract the seller shall disclose in accordance with paragraph (c) of this section:

(i) For residence courses with fixed class schedules, for the seller's most recent graduating class:

(A) the number of enrollees;

(B) the number of graduates;

(C) the number who failed to complete;

(D) the percentage of enrollees who graduated expressed as the percentage of graduates to the total number of enrollees; and

(E) the percentage of enrollees who failed to complete, expressed as the percentage of those who failed to complete to the total number of enrollees.

(ii) For residence courses without fixed class schedules, for individuals who became enrollees during the seller's most recent two base periods, or most recent base period if individuals only became enrollees during those periods:

(A) the number of enrollees;

(B) the number of those enrollees who graduated during that time;

(C) the number of those enrollees who failed to complete during that time;

(D) the number of those enrollees who remained actively enrolled until after that time;

(E) the percentage of graduates to enrollees as described in subparagraphs (b)(1)(ii)(A) and (B) of this paragraph;

(F) the percentage of those who failed to complete to enrollees as described in subparagraphs (b)(1)(ii)(A) and (C) of this paragraph; and

(G) the percentage of those actively enrolled to enrollees as described in subparagraphs (b)(1)(ii)(A) and (D) of this paragraph.

(iii) For correspondence courses, for individuals who became enrollees during the seller's most recent four base periods, or most recent two or three base periods if individuals only became enrollees during those periods:

(A) the number of enrollees;

(B) the number of those enrollees who graduated during that time;

(C) the number of those enrollees who failed to complete during that time;

(D) the number of those enrollees who remained actively enrolled until at least after that time;

(E) the percentage of graduates to enrollees as described in subparagraphs (b)(1)(iii)(A) and (B) of this paragraph;

(F) the percentage of those who failed to complete to enrollees as described in subparagraphs (b)(1)(iii)(A) and (C) of this paragraph; and

(G) the percentage of those actively enrolled to enrollees as described in subparagraphs (b)(1)(ii)(A) and (D) of this paragraph.

(iv) For new courses:

"Our course is too new for us to know how often students who take this course finish or don't finish. So no one who works for us can answer this."

(2)(i) If the seller makes any oral, written or broadcast job or earnings claims to a buyer, then the seller, in accordance with paragraph (c) of this section, shall make the disclosures specified in subparagraph (b)(3) of this paragraph.

(ii) No oral, written or broadcast specific job or earnings claims shall be made in connection with a new course. If the seller, in connection with a new course, makes any oral, written or broadcast general job or earnings claims to a buyer, then the seller, in accordance with paragraph (c) of this section, shall make the disclosures specified in subparagraph (b)(7) and not (b)(3) of this paragraph.

(3) When required by paragraph (a) or subparagraph (b)(2) of this section, the seller shall disclose:

(i) For residence courses with fixed class schedules, for the seller's most recent graduating class:

(A) The number of enrollees who within four months of leaving the course obtained employment in jobs for which seller's course prepared them;

(B) the percentage of these enrollees to total enrollees;

(C) the number of these enrollees by their yearly gross salary, in increments of two thousand dollars ($2,000);

(D) the percentage of these enrollees within each salary increment to total enrollees;

(E) the same calculations required by subparagraphs (b)(3)(i)(A)-(D) of this paragraph except substituting the word "graduates" for "enrollees" in those subparagraphs.

(ii) For residence school courses without fixed class schedules, for individuals who became enrollees during the seller's most recent two base periods, or most recent base period if individuals only become enrollees during that period:

(A) the number of enrollees who, within four months of leaving the course, obtained employment in jobs for which seller's course prepared them;

(B) the percentage of these enrollees to total enrollees;

(C) the number of these enrollees by their yearly gross salary, in increments of two thousand dollars ($2,000);

(D) the percentage of these enrollees within each salary increment to the total enrollees; and

(E) the same calculations required by subparagraphs (b)(3)(ii)(A)-(D) of this paragraph except substituting the word "graduates" for "enrollees" in those subparagraphs.

(iii) For correspondence courses, for individuals who became enrollees during the seller's most recent four base periods:

(A) The number of enrollees who within four months of leaving the course obtained employment in jobs for which seller's course prepared them;

(B) the percentage of these enrollees to total enrollees;

(C) the number of these enrollees by their yearly gross salary in increments of two thousand dollars ($2,000);

(D) the percentage of these enrollees within each salary increment to total enrollees;

(E) the same calculations required by subparagraphs (b)(3)(iii)(A) - (D) of this paragraph except substituting the word "graduates" for "enrollees" in those subparagraphs.

(4) The disclosures specified by subparagraphs (b)(3) of this paragraph shall be substantiated by the seller's actual knowledge of his enrollees' experiences. Actual knowledge shall be verified, at a minimum, by a list including the following information for each enrollee who is counted as obtaining employment in a job for which seller's course prepared him:

(i) the enrollee's name, and address or telephone number;

(ii) the name of the employer who hired the enrollee;

(iii) the name or title of the job obtained;

(iv) information which indicates that the job was obtained within four (4) months of leaving the school, and;

(v) the enrollee's annual gross salary expressed in increments of two thousand dollars ($2,000).

(5) A seller may, at its option, disclose:

> "You should know that many of our students don't take this course to get a job."

(6) If the seller has not made any oral, written, or broadcast job or earnings claims to the buyer, then the seller, in accordance with paragraph (c) of this section, shall disclose one of the following, as applicable to the seller:

(i) "We don't know how many of our students get the jobs we train them for. We can't tell you your chance of getting such a job when you finish. So no one who works for us should talk to you about jobs or earnings";

(ii) "Many of our students don't take this course to get a job. And we can't tell you your chance of getting a job when you finish. No one who works for us should talk to you about jobs or earnings";

(iii) We don't want to talk about our students' job chances when they finish our course. So no one who works for us should talk to you about jobs or earnings"; or

(iv) "Since this is a new course we can't tell you your chances of getting a job when you finish. No one who works for us should talk to you about jobs or earnings."

(7) When required by paragraph (a) or subparagraph (b)(2) of this section, the seller shall disclose:

> "This course is too new for us to know how our previous students did. We can't tell you your chances of getting a job when you finish. All we can talk about is the general demand for people in the field we train you for. But this may change in the future. Or the demand near where you live may be more or less. Or there may be jobs just for people with more background in the field. We suggest you speak to a counselor or the state employment office about these things."

(c) Method of Making Disclosures.

(1) After receiving a buyer's signed enrollment contract, the seller shall mail to the buyer a written form, in duplicate, herein referred to as the Disclosure Form. However, if the seller never communicates in person or by telephone with the buyer, the Disclosure Form may be mailed prior to the seller's receipt of a signed enrollment contract. In either case, the Disclosure Form shall be mailed to the buyer in an envelope that shall not include any other written or printed materials.

(2) The Disclosure Form shall contain the information required or permitted to be disclosed by subparagraphs (b)(1)-(3), (5), (6) and (7) of this section. At the bottom of the form shall appear the following unsigned statement:

Notice to the Buyer

> You're still free to drop the course in ______ you signed up for on ______. If you want to drop it, simply do nothing. Then, if we don't hear from you within 21 days, we'll refund any money you paid us for this course and send back any paper you signed.

If you do want to take the course, please sign this notice, date it, and mail or give it back to us. Keep the copy for your records.

Date ______________ Name ___________________

Provided that if the seller's course is sold exclusively by mail, the following unsigned statement shall appear instead:

Notice to the Buyer

If you want to take this course, sign this notice, date it, and mail or give it back to us. Keep the copy for your records.

Date ______________ Name _____________________

The Disclosure Form shall not contain any other information or representations. All writing shall be in type of at least ten (10) points and in conformance with Appendices A through E as applicable.

(d) Affirmation and Cooling-Off Period.

(1) An enrollment contract between a seller and buyer will not be effective and the buyer will have no obligation unless and until the seller has complied with the provisions of paragraph (c) of this section and the buyer has duly signed and returned to the seller the Disclosure Form.

(2) If the buyer has provided the seller with money or any evidence of indebtedness, and if the buyer fails to deliver to the seller a signed Disclosure Form within twenty-one (21) days of the seller's receipt of this money or evidence of indebtedness, the seller shall refund all monies paid by the buyer and cancel and return to the buyer any evidence of indebtedness within twenty-one (21) additional days.

(3) The Disclosure Form signed by the buyer shall be invalid and the enrollment contract signed by the buyer shall not be effective and buyer will have no obligation if, during the period that begins with the buyer's receipt of the Disclosure Form and ends with the buyer's delivery of the duly signed Disclosure Form to the seller, the seller initiates oral or telephone communication of any nature with the buyer, or if the seller engages in any oral communication, whether initiated by the seller or buyer, at the buyer's residence concerning job or earnings claims or the ability or success of buyers in completing the seller's course of study.

(4) If the seller has engaged in any communication prohibited by subparagraph (d)(3) of this section, notwithstanding that the buyer had provided the seller with a duly signed

Disclosure Form, the seller shall comply with subparagraph (d)(2) of this paragraph as if the buyer had not provided seller with the Form.

(5) The enrollment contract between seller and buyer shall indicate the conditions set forth in subparagraphs (d)(1) and (d)(3) of this paragraph.

(6) Sales which are subject to the provisions of this section are exempted from compliance with the Federal Trade Commission's Trade Regulation Rule concerning a Cooling-Off Period for Door-to-Door Sales, 16 C.F.R. 429.

(e) Refund Upon Cancellation.

(1) Upon cancellation of an effective enrollment contract the seller shall not receive, demand, or retain more than a pro rata portion of the total contract price, plus a registration fee of twenty-five dollars ($25). In any case, this total obligation shall not be more than the total contract price.

(2) The pro rata portion shall be calculated in the following manner:

(i) up to the time of buyer's cancellation, the number of classes or hours held in a residence course with a fixed class schedule, the number of classes or hours attended by the buyer at a residence course without a fixed class schedule, or the lessons sent in for a correspondence course shall be determined;

(ii) this number shall be divided by the total number of classes, hours or lessons required to complete the courses; and

(iii) the resulting number shall be multiplied by the total contract price.

(3) Within twenty-one (21) days of the date of cancellation, the seller must provide the buyer with his correct refund payment, if any, or must cancel that portion of the buyer's indebtedness that exceeds the amount due the seller.

(f) Disclosure of Cancellation and Refund Rights.

(1) The seller shall furnish the buyer with a fully completed copy of the buyer's enrollment contract and in close proximity to the space reserved in the contract for the buyer's signature, and in bold face type of at least ten (10) points include the following statement:

> Important Notice: Before you sign, be sure to read the section headed "If You Change Your Mind."

(2) For correspondence courses, the seller shall include in the contract in bold face type of at least ten (10) points the following provisions:

If You Change Your Mind

> If you change your mind for any reason, you can drop this course any time. All you have to do is send or give back to us the notice we send you, headed "I've changed my mind." Be sure to sign it, date it, and keep a copy. You can also send or give us instead a letter signed by you that says you want to drop the course. The day you do any of these things, you've dropped the course.
>
> You can also drop the course by simply not sending in any lessons for 120 days.
>
> No matter how you drop out, you will have to pay for the lessons you sent in.
>
> We'll figure the amount you owe us like this. The price per lesson is $____. We multiply this by the number of lessons you sent in. We add a $25 registration fee. The total is what you owe us.
>
> If you've already paid more, we'll refund you the difference within 21 days.

(3) For residence courses, the seller shall include in the contract in bold face type of at least ten (10) points the following provisions, including the bracketed provisions if the course has fixed class schedules:

If You Change Your Mind

> If you change your mind for any reason, you can drop this course any time. All you have to do is send or give back to us the notice we send you, headed "I've changed my mind." Be sure to sign it, date it, and keep a copy. You can also send or give us instead a letter signed by you that says you want to drop the course. The day you do any of these things, you've dropped the course.
>
> You can also drop the course by simply not going to school. [But that way you'll have to pay for some of the classes you missed.] We won't drop you from the course until you've missed ___ days [of scheduled classes].

No matter how you drop out, you will have to pay for the classes you attended [or were held] up to the time you drop out.

We'll figure the amount you owe us like this. The price per class (or hour) is $_____. We multiply this by the number of classes (or hours) held up to the time you dropped out. We add a $25 registration fee. The total is what you owe us.

If you've already paid more, we'll refund you the difference within 21 days.

(4) For combination courses, the seller shall include in the contract in bold face type of at least ten (10) points the following provisions:

If You Change Your Mind

You paid $____ for the part of the course you do at home. You also paid $____ for the part of the course held at the school.

If you change your mind for any reason, you can drop this course any time. All you have to do is send or give back to us the notice we send you headed "I've changed my mind." Be sure to sign it, date it and keep a copy. You can also send or give us instead a letter signed by you that says you want to drop the course. The day you do any of these things, you've dropped the course.

You can also drop the course by simply not sending in any lessons or not going to school. But if you don't go to scheduled classes, you may have to pay for some of these you missed. We won't drop you from the course until you've missed ____ days of classes, or haven't sent in a lesson for 120 days.

No matter how you drop out, you'll have to pay for the classes held up to the time you drop out, and the lessons you sent in.

We'll figure the amount you owe us like this. The price per lesson you do at home is $_____. We multiply this by the number of lessons you sent in. The price per class (or hour) at the school is $_____. We multiply this by the number of classes (or hours) held at the school up to the time you dropped out. We add a $25 registration fee. The total of all this is the amount you owe us.

If you've already paid more, we'll refund you the difference within 21 days.

(g) Method of Cancellation.

(1) Upon receipt of a signed enrollment contract and duly signed Disclosure Form, seller shall furnish buyer within ten days with a post card, plus duplicate card, addressed to seller and captioned:

I've changed my mind. I'm dropping this course.

__________________________ ______________________

(Full Name) (Date)

____

(Buyer's Signature)

Seller shall at the same time and in the same envelope provide buyer with an additional copy of that part of the contract headed "If You Change Your Mind" as described in subparagraphs f(2)-(4) of this section.

(2) The buyer's cancellation is effective on the date that the buyer mails or delivers to the seller a signed and dated copy of the cancellation notice described in subparagraph (g)(1) of this paragraph or any other written notice, or cancellation is effective on the date that the buyer gives the seller constructive notice of his intention.

(3) A buyer who does not attend any residence classes will be considered to have given constructive notice prior to the first class.

(4) If a buyer gives written notice of his intention to remain enrolled, the time period for measuring constructive notice will begin anew at the time buyer gives such written notice, and any previous cancellation by virtue of buyer's constructive notice is not effective.

(h) Refund for Combination Courses.

(1) For combination courses, seller shall designate separate prices for the correspondence and residence portions and disclose these prices separately whenever seller states the price of the course in writing, orally, or through broadcast media.

(2) For combination courses, the pro rata portion of the total contract price, as specified by subparagraph (e)(1) of this section, shall be determined separately for the residence and correspondence portions according to the methods described in subparagraph (e)(2) of this section. The buyer's total obligation shall be the sum of the separate obligations for the correspondence portion and the residence portion, and the payment of a registration fee of twenty-five dollars ($25).

(3) Constructive notice for combination courses shall include any of the notices for various types of courses defined in paragraph (n) of Section 438.1 of this part whenever buyer is enrolled in a portion of the course that corresponds to that type of course.

(4) Nothing contained in this paragraph shall be construed to relieve sellers from complying with subparagraphs (e)(3), (f)(1), (f)(4), and (g) of this section.

APPENDIX A

(Disclosure Form for Residence Courses with Fixed Class Schedules that Make Job and Earnings Claims)

ABC SCHOOL - Drafting Course

Job and Earnings Record for the class that graduated on May 1, 1976.

Our records show that:

1. Graduation Record

100 students enrolled.
80 students or 80% of the class graduated.
20 students or 20% of the class did not finish the course.

68 students or 68% of those who started the class got jobs in drafting by September 1, 1976.

2. Placement Record

Of these 68 students with jobs:

11 or 11% of the class earned	$ 6,000-$ 7,999
23 or 23%	$ 8,000-$ 9,999
28 or 28%	$10,000-$11,999
5 or 5%	$12,000-$13,999
1 or 1%	$18,000-$20,000

68 or 68% of the class got jobs.

64 graduates or 80% of all graduates got jobs in drafting by September 1, 1976.

Of these 64 graduates with jobs:

10 or 13% of all graduates earned	$ 6,000-$ 7,999
22 or 27%	$ 8,000-$ 9,999
27 or 34%	$10,000-$11,999
5 or 6%	$12,000-$13,999

64 or 68% of the class got jobs.

Notice to the Buyer

You're still free to drop the course in Drafting you signed up for on September 15, 1976. If you want to drop it, simply do nothing. Then, if we don't hear from you within 21 days, we'll refund any money you paid us for this course and send you any paper you signed.

If you do want to take the course, please sign this notice, date it, and mail or give it back to us. Keep the copy for your records.

Date ____________________ Name ____________________________

APPENDIX B

(Disclosure Form for Residence Courses Without Fixed Class Schedules That Make Job and Earnings Claims)

ABC SCHOOL - Drafting Course

Job and Earnings Record for students enrolled from January 1, 1975 through January 1, 1976.

Our records show that:

1. Graduation Record

100 students enrolled.
70 students or 70% of these graduated.
20 students or 20% of these left the course.
10 students or 10% of these are still enrolled.

2. Placement Record

68 students or 76% of the 90 who graduated or left the course got jobs in drafting within four months of leaving school.

Of these 68 students with jobs:

11 or 12%	of the 90 who graduated or left the course earned	$ 6,000 - $ 7,999
23 or 26%		$ 8,000 - $ 9,999
28 or 31%		$10,000 - $11,999
5 or 6%		$12,000 - $13,999
1 or 1%		$18,000 - $20,000

68 or 76% of the 90 who graduated or left the course got jobs.

64 graduates or 91% of all graduates got jobs in drafting within four months of leaving school.

Of these 64 graduates with jobs:

10 or 14%	of all graduates earned	$ 6,000 - $ 7,999
22 or 31%		$ 8,000 - $ 9,999
27 or 39%		$10,000 - $11,999
5 or 7%		$12,000 - $20,000

64 or 91% of all graduates got jobs.

Notice to the Buyer

You're still free to drop the course in Drafting you signed up for on September 15, 1976. If you want to drop it, simply do nothing. Then, if we don't hear from you within 21 days, we'll refund any money you paid us for this course and send you any paper you signed.

If you do want to take the course, please sign this notice, date it, and mail or give it back to us. Keep the copy for your records.

Date ____________________ Name ____________________

APPENDIX C

(Disclosure Form for Correspondence Courses That Make Job and Earnings Claims With Optional Disclosure)

ABC SCHOOL - Drafting Course

Job and Earnings Record for students enrolled from January 1, 1974 through January 1, 1975.

Our records show that:

1. Graduation Record

100 students enrolled.
70 students or 70% of these graduated.
20 students or 20% of these left the course.
10 students or 10% of these are still enrolled.

2. Placement Record

68 students or 76% of the 90 who graduated or left the course got jobs in drafting within four months of leaving school.

Of these 68 students with jobs:

11 or 12% of the 90 who graduated or left the course earned	$ 6,000 - $ 7,999
23 or 26%	$ 8,000 - $ 9,999
28 or 31%	$10,000 - $ 11,999
5 or 6%	$12,000 - $ 13,999
1 or 1%	$18,000 - $ 20,000

68 or 76% of the 90 who graduated or left the course got jobs.

64 graduates or 91% of all graduates got jobs in drafting within four months of leaving school.

Of these 64 graduates with jobs:

10 or 14% of all graduates earned	$ 6,000-$ 7,999
22 or 31%	$ 8,000-$ 9,999
27 or 39%	$10,000-$11,999
5 or 7%	$12,000-$13,999

64 or 91% of all graduates got jobs.

You should know that many of our students don't take this course to get a job.

Notice to the Buyer

You're still free to drop the course in Drafting you signed up for on September 15, 1976. If you want to drop it, simply do nothing. Then, if we don't hear from you within 21 days, we'll refund any money you paid us for this course and send you any paper you signed.

If you do want to take the course, please sign this notice, date it, and mail or give it back to us. Keep the copy for your records.

Date____________________ Name ____________________

APPENDIX D

(Partial Disclosure Form for Residence Courses With Fixed Class Schedules That Do Not Make Job and Earnings Claims)

ABC SCHOOL - Drafting Course

You Should Know

Since this is a new course we can't tell you your chances of getting a job when you finish. No one who works for us should talk to you about jobs or earnings.

[or whatever other disclosure is appropriate]

Notice to the Buyer

You're still free to drop the course in Drafting you signed up for on September 15, 1976. If you want to drop it, simply do nothing. Then, if we don't hear from you within 21 days, we'll refund any money you paid us for this course and send back any paper you signed.

If you do want to take the course, please sign this notice, date it, and mail or give it back to us. Keep the copy for your records.

Date____________________ Name________________________

APPENDIX E

(Partial Disclosure Form for Correspondence Courses That Do Not
Make Job and Earnings Claims and That Enroll
Through the Mail)

ABC SCHOOL - Drafting Course

You Should Know

Many of our students don't take this course to get a job. And we can't tell you your chance of getting a job when you finish. No one who works for us should talk to you about jobs or earnings.

[or whatever other disclosure is appropriate]

Notice to the Buyer

If you want to take this course, sign this notice, date it, and mail or give it back to us. Keep the copy for your records.

Date____________________ Name____________________________

B. Originally Published Trade Regulation Rule - May 15, 1975

438.1 - Definitions.

For the purposes of this Rule, the following definitions shall apply:

(a) Seller. (1) Any individual, firm, corporation, association or organization engaged in the operation of a privately owned school, studio, institute, office or other facility which offers residence or correspondence courses of study, training, or instruction purporting to prepare or qualify individuals for employment or training in any occupation, trade, or in work requiring mechanical, technical, business, trade, artistic, supervisory, clerical or other skills or purporting to enable a person to improve his skills in any of the above designated categories.

(2) Nothing in this Rule shall be construed to affect in any way those engaged in the operation of not-for-profit residence or correspondence, public or private institutions of higher education which offer students at least a two year program of accredited college level instruction which is generally acceptable for credit toward a bachelor's degree.

(b) Buyer. Any individual who purchases any correspondence or residence course of study, training, or instruction from any seller purporting to prepare or qualify individuals for employment or training in any occupation, trade, or work requiring mechanical, technical, business, trade, artistic, supervisory, clerical or other skills or purporting to enable a person to improve his skills in any of the above designated categories.

(c) Total contract price. The total price paid or to be paid by the buyer for the property or services including any and all equipment; ancillary services, such as but not limited to, charges for room and board which are the subject of the contract; and any finance charges determined in accordance with the Federal Reserve Regulation Z (12 CFR 226.4).

(d) Course. The term "course" means, but is not limited to education, training, or instruction consisting of a series of lessons or classes sold collectively, including lessons or classes which consist of several parts and are coordinated, arranged, or packaged to constitute a curriculum or program of instruction and sold collectively.

(e) Combination course. Any course that consists of both correspondence lessons and residence classes shall be treated as a residence course for the purpose of applying the advertising and disclosure requirements of this Rule.

(f) Enrollee. A buyer who has affirmed his enrollment contract, whether or not he completes his course of study.

(g) Failure to complete a course of study. Includes any enrollee who drops out, is expelled, fails for academic reasons or does not complete a course within the time that is scheduled for that course's completion, including any enrollee who takes a leave of absence.

(h) New Course. Any course of study which has substantially different course content and occupational objectives from any course of study previously offered by seller and which has been offered for a period of time less than three (3) months after the graduation of one class, if offered by a residence school, or less than three (3) months after the completion of one fiscal year, if offered by a correspondence school.

(i) New school. Any school that has been in operation for a period of time less than three (3) months after the graduation of one class if a residence school or less than three (3) months after the completion of one fiscal year, if a correspondence school.

438.2 - The Rule

In connection with the sale or promotion of any course of instruction by a proprietary home study or residence vocational school in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair method of competition and an unfair or deceptive act or practice for any such seller to fail to comply with the following requirements:

(a) Employment and earnings claims. (1) No written or broadcasted claim, direct or indirect, whether disseminated through the media, mails, or in any other manner shall be made with respect to:

(i) The general conditions or employment demand in any employment market now or at any time in the future; and

(ii) The amount of salary or earnings generally available to persons employed in any occupation.

(2) Unless it is substantiated according to the standards and confined to the format prescribed herein, no written or broadcasted claim, direct or indirect, disseminated through the media, mails, or in any other manner, shall be made with respect to:

(i) The specific employment opportunities available or demand for buyers who purchase seller's course of study; and

(ii) The specific amount of salary or earnings available to buyers who purchase seller's course of study.

(3) Written or broadcasted claims subject to the exception in paragraph (a)(2) above shall be limited to claims substantiated by the seller's actual knowledge of his buyers' experiences in obtaining placement at specific salary levels in the employment positions for which seller's course of study prepares buyers. Actual knowledge shall be verified, at a minimum, by a list including the following information for each enrolled person who meets the requirements of paragraph (a)(4) below.

(i) his name, address and telephone number;

(ii) the name, address and telephone number of the firm or employer who hired each enrollee;

(iii) the name or title of the job position obtained;

(iv) the date on which the job position was obtained;

(v) his monthly or annual salary.

(4) Employment and earnings claims covered by paragraph (a)(2) above shall be confined to the following statements and no others, for each course for which such claims are made and if any one permitted statement is made, it shall be accompanied by the others:

(i) For correspondence courses of study, a statement of the total number of buyers whose enrollment terminated during the school's last fiscal year and who obtained positions of employment within three (3) months of leaving the school in job positions for which seller's course of study prepared them; a statement of the monthly or yearly range of salaries obtained by such buyers; a statement of the percentage ratio of such buyers by salary ranges to the total number of buyers who were enrolled in the seller's course during the last fiscal year; and a statement of of the percentage ratio of such buyers who graduated, by salary ranges, to the total number of graduates who graduated from seller's course during the last fiscal year. For purposes of this subparagraph (i), the last fiscal year shall be the most recent fiscal year that terminated at least three (3) months before the claim is made.

(ii) For the residence courses of study, a statement of the total number of buyers whose enrollment terminated during the period that begins with the entrance and ends with the graduation of the school's most recent graduating class and who obtained positions of employment within three (3) months of leaving the school in job positions for which seller's course of study prepared them; a statement of the monthly or yearly range of salaries earned by such buyers; a statement of the percentage ratio of such buyers by salary ranges to the total number of buyers who were enrolled in the seller's course during the period that begins with the entrance and ends with the graduation of the school's most recent graduating class; and a statement of the percentage ratio of such buyers who graduated, by salary ranges, to the total number of graduates who graduated from seller's course during the period that begins with the entrance and ends with the graduation of the school's most recent graduating class. However, these statements must be based on the experiences of enrollees who resided at the time of their enrollment in the metropolitan area or State where the statements are made. For purposes of this subparagraph (ii) the most recent graduating class shall be that class which graduated at least three (3) months before the claim is made.

Provided, *however*, That where an employment or earnings claim covered by this paragraph (a) is made, the written or broadcasted claim must be presented so that each of the permitted statements appears in the same portion of the written or broadcasted claim and each is made in precisely the same form and with the same emphasis, including, but not limited to, the same size type or print, as all other statements covered by this paragraph (a).

(5) The foregoing (paragraph (a)(1) to (4)) shall not apply to any new course of instruction offered by seller or a course of study offered by seller at a new school.

In lieu thereof seller shall confine any advertisement or any representation covered by paragraph (a) to actual job commitments made in writing by businesses and other prospective employers, wherein such prospective employers indicate that they will offer a specific number of jobs at specific salaries to buyers who complete seller's course of study. Provided further, That seller's advertisements and representations shall be limited to the following statements:

> THIS SCHOOL HAS NOT BEEN IN OPERATION LONG ENOUGH OR THIS COURSE OF STUDY HAS NOT BEEN OFFERED LONG ENOUGH TO INDICATE HOW MANY ENROLLED STUDENTS WILL OBTAIN EMPLOYMENT IN POSITIONS FOR WHICH THIS COURSE TRAINS THEM. HOWEVER, [NUMBER] EMPLOYERS HAVE INDICATED THAT THEY WILL MAKE AVAILABLE [NUMBER] JOBS TO STUDENTS WHO COMPLETE THIS COURSE OF STUDY. [NUMBER] JOBS REPRESENT [%] OF OUR EXPECTED TOTAL ENROLLEES WHICH WILL BE [NUMBER].

(b) Affirmative disclosure of drop-out rate and placement record.[1] (1) After buyer has signed an enrollment contract seller shall make the following disclosures to buyer in the manner and method prescribed by paragraph (c) below:

(i) the total number of buyers who fail to complete the full course of study for the seller's most recent graduating class[2] if a residence school or the seller's most recent fiscal year[3] if a correspondence school.

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[1] See Appendices A and B for illustrations of Disclosure and Affirmation forms for Correspondence and Residence Schools.

[2] As most recent graduating class is defined in paragraph (a)(4)(ii).

[3] As most recent fiscal year is defined in paragraph (a)(4)(i).

(ii) The percentage of buyers who fail to complete the full course of study, expressed as the percentage ratio of the number of buyers who fail to complete the full course of study as defined in paragraph (b)(1)(i) of this section to the total number of buyers who enrolled in that course of study for the seller's most recent graduating class[4] if a residence school or seller's most recent fiscal year[5] if a correspondence school.

(2) If seller has made any oral, written or broadcasted earnings or employment representations to buyer then, after buyer has signed the enrollment contract, seller shall make the following disclosures to buyer in the manner and method prescribed in paragraph (c) below:

(i) For correspondence courses of study a statement of the total number of buyers whose enrollment terminated during the school's last fiscal year and who obtained positions of employment within three (3) months of leaving the school in job positions for which seller's course of study prepared them; a statement of the monthly or yearly range of salaries obtained by such buyers; a statement of the percentage ratio of such buyers, by salary ranges, to the total number of buyers who were enrolled in seller's course during the last fiscal year; and a statement of the percentage ratio of such buyers who graduated, by salary ranges, to the total number of buyers who graduated from seller's course during the last fiscal year. For purposes of this subparagraph (i) the last fiscal year shall be the most recent fiscal year that terminated at least three (3) months before the claim is made.

(ii) For residence courses of study a statement of the total number of buyers whose enrollment terminated during the period that begins with the entrance and ends with the graduation of the school's most recent graduating class and who obtained positions of employment within three (3) months of leaving the school in job positions for which seller's course of study prepared them; a statement of the monthly or yearly range of salaries obtained by such buyers; a statement of the percentage ratio of such buyers, by salary ranges, to the total number of buyers who were enrolled in seller's course during the period that begins with the entrance and ends with the graduation of the school's most recent graduating class; and a statement of the percentage ratio of such buyers who graduated, by salary ranges, to the total number of buyers who graduated from seller's course during the period that begins with the entrance and ends with the graduation of the school's most recent graduating class. However, this disclosure must be based on the experiences of enrollees who resided at the time of their enrollment in the metropolitan area or State where the disclosure is being made. For purposes of this subparagraph (ii) the most recent graduating class shall be that class which graduated at least three (3) months before the claim is made.

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[4] As most recent graduating class is defined in paragraph (a)(4)(ii).

[5] As most recent fiscal year is defined in paragraph (a)(4)(i).

(3) For each of the disclosures covered by paragraph (b) above, seller shall maintain complete records as provided in paragraph (a)(3) above.

(c) Method of making disclosure of drop-out rate and placement record.[6] (1) After buyer signs an enrollment contract, seller shall mail to buyer, by certified mail, return receipt requested, a written form, in duplicate, containing the following information, and none other, except the Affirmation Statement required by paragraph (e) below, in bold face type of at least ten (10) points for each course of study offered to the buyer.

DISCLOSURE AND AFFIRMATION FORM FOR
[NAME OF SCHOOL]

DROP-OUT AND PLACEMENT RECORD FOR [COURSE]
FOR PERIOD [DATE] TO [DATE]

(1) TOTAL ENROLLMENTS [NUMBER].

(2) TOTAL WHO FAILED TO COMPLETE THE COURSE [NUMBER] (as provided in paragraph (b)(1)(i) above.)

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[6] *See* Appendices A and B for illustrations of Disclosure and Affirmation Forms for Correspondence and Residence Schools.

(3) PERCENTAGE WHO FAILED TO COMPLETE THE COURSE [%] (as provided in paragraph (b)(1)(ii) above).

(Seller shall use number (4) below if no oral, written or broadcasted earnings or employment representations have been made. If seller has made oral, written or broadcasted earnings or employment representation to buyer, seller shall use numbers (5), (6), (7), (8), and (9) below).

(4) THIS SCHOOL HAS NO INFORMATION ON THE NUMBER OR PERCENTAGE OF ITS STUDENTS WHO OBTAIN JOBS IN THE OCCUPATION FOR WHICH WE TRAIN THEM. CONSEQUENTLY, THIS SCHOOL AND ITS REPRESENTATIVES HAVE NO BASIS ON WHICH TO MAKE ANY REPRESENTATIONS OR CLAIMS ABOUT JOB OPPORTUNITIES AVAILABLE TO STUDENTS WHO TAKE [NAME OF COURSE]. PROSPECTIVE STUDENTS ARE ADVISED THAT ENROLLMENT IN THIS COURSE SHOULD NOT BE CONSIDERED VOCATIONAL TRAINING THAT WILL RESULT IN EMPLOYMENT IN JOB POSITIONS FOR WHICH THIS COURSE OFFERS INSTRUCTION.

or,

(5) TOTAL NUMBER OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY TRAINED THEM [NUMBER] (as provided in paragraph (b)(2) above).

(6) PERCENTAGE OF STUDENTS WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY TRAINED THEM [%] (as provided in paragraph (b)(2) above).

(7) NUMBER AND PERCENTAGE OF TOTAL ENROLLEES WHO OBTAINED EMPLOYMENT IN THE FOLLOWING SALARY RANGES [EXPRESSED IN $100 INCREMENTS FOR MONTHLY SALARIES OR $1000 INCREMENTS FOR YEARLY SALARIES]. [DOLLARS] TO [DOLLARS] PER [MONTH OR YEAR:] [NUMBER] STUDENTS WHICH IS [%] OF TOTAL ENROLLEES (as provided in paragraph (b)(2) above).

(8) PERCENTAGE OF GRADUATES WHO OBTAINED EMPLOYMENT IN THE POSITION FOR WHICH THIS COURSE OF STUDY TRAINED THEM [%]. (as provided in paragraph (b)(2) above.)

(9) NUMBER AND PERCENTAGE OF GRADUATES WHO OBTAINED EMPLOYMENT IN THE FOLLOWING SALARY RANGES [EXPRESSED IN $100 INCREMENTS FOR MONTHLY SALARIES OR $1000 INCREMENTS FOR YEARLY SALARIES]. [DOLLARS TO DOLLARS] PER [MONTH OR YEAR]: [NUMBER] STUDENTS WHICH IS [%] OF TOTAL GRADUATES (as provided in paragraph (b)(2) above).

(2) Where seller has instituted a new course of instruction or where seller has established a new school, the seller's disclosure as required by paragraph (b) of this Rule shall contain the following information, and none other, except the Affirmation Statement required by paragraph (e) below, in bold face type of at least ten (10) points:

IMPORTANT INFORMATION

THIS SCHOOL HAS NOT BEEN IN OPERATION LONG ENOUGH OR THIS COURSE OF STUDY HAS NOT BEEN OFFERED LONG ENOUGH TO INDICATE HOW MANY ENROLLED STUDENTS WILL COMPLETE THEIR COURSE OF STUDY OR TO INDICATE HOW MANY STUDENTS WHO TAKE THIS COURSE OF STUDY WILL OBTAIN EMPLOYMENT IN POSITIONS FOR WHICH THIS COURSE TRAINS THEM.

Except that where the seller has received actual written job commitments from businesses and other prospective employers, seller may add the following statement to the disclosure required above:

HOWEVER, [NUMBER] EMPLOYERS HAVE INDICATED THAT THEY WILL MAKE AVAILABLE [NUMBER] JOBS TO STUDENTS WHO COMPLETE THIS COURSE OF STUDY. [NUMBER] JOBS REPRESENT [%] PERCENT OF OUR EXPECTED TOTAL ENROLLEES WHICH WILL BE [NUMBER].

(d) Ten day affirmation and cooling-off period.[7]

An enrollment contract between a seller and buyer will not be effective unless the buyer affirms that enrollment contract by signing and returning to seller the Disclosure and Affirmation Form specified in paragraph (e) below within ten (10) days of his receipt of that Form. If the buyer fails to affirm the enrollment contract within the ten (10) day period, seller shall consider the contract null and void, and within ten (10) business days of the expiration of the affirmation period, shall refund all monies paid by the buyer and cancel and return to buyer and evidence of indebtedness.

(e) Disclosure and operation of ten (10) day cooling-off period.[8] (1) After receiving from the buyer his signed enrollment contract, seller shall mail to buyer, by certified mail return receipt requested, a one-page form, in duplicate, that contains the placement and drop-out disclosures required by paragraphs (b)(1) and (2), above, in the form required by paragraph (c), above; and at the bottom of the same form the following unsigned Affirmation Statement printed in bold face type of at least ten (10) points:

NOTICE TO THE BUYER:

> THE ENROLLMENT CONTRACT THAT YOU SIGNED WITH [NAME OF SCHOOL] ON [DATE] TO ENROLL IN [NAME OF COURSE] IS NOT EFFECTIVE OR VALID UNLESS YOU FIRST SIGN THIS STATEMENT AND RETURN IT TO THE ABOVE NAMED SCHOOL WITHIN TEN (10) DAYS FROM THE TIME THAT YOU RECEIVED THIS STATEMENT. YOU ARE FREE TO CANCEL YOUR ENROLLMENT AND RECEIVE A FULL REFUND OF ANY MONIES YOU HAVE PAID TO THE SCHOOL BY NOT SIGNING OR MAILING THIS STATEMENT WITHIN TEN (10) DAYS. AT THE EXPIRATION OF THIS TEN (10) DAY PERIOD THE SCHOOL HAS TEN (10) BUSINESS DAYS TO SEND YOU YOUR REFUND (IF ANY) AND TO CANCEL AND RETURN TO YOU ANY EVIDENCE OF INDEBTEDNESS THAT YOU SIGNED. HOWEVER, IF YOU DO WANT TO ENROLL IN THE ABOVE NAMED SCHOOL, YOU SHOULD SIGN YOUR NAME BELOW AND MAIL THIS

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[7] See Appendices A and B for illustrations of Disclosure and Affirmation Forms for Correspondence and Residence Schools.

[8] See Appendices A and B for illustrations of Disclosure and Affirmation Forms for Correspondence and Residence Schools.

STATEMENT TO THE SCHOOL WITHIN TEN (10) DAYS.
KEEP THE DUPLICATE COPY FOR YOUR OWN RECORDS.

____
(DATE)

____
(SIGNATURE)

(2) The Disclosure and Affirmation form shall not contain any information or representations other than the drop-out and placement disclosures provided by paragraphs (b)(1) and (2), above, and the Affirmation Statement in (1) above. Seller shall not send any document or material to buyer other than the Disclosure and Affirmation Form during the ten (10) day affirmation and cooling-off period that commences with buyer's receipt of the Disclosure and Affirmation Form.

(3) Sellers who are subject to the provisions of this Rule are exempted from compliance with the Federal Trade Commission's Trade Regulation Rule concerning a Cooling-Off Period for Door-to-Door Sales, effective June 7, 1974.

(f) Refund upon cancellation. (1) Upon cancellation of an affirmed contract the seller shall not receive, demand or retain more than a pro rata portion of the total contract price, plus a registration fee of five percent (5%) of the total contract price but not to exceed twenty-five dollars ($25). (2) The pro rata refund shall be determined by dividing the number of classes attended by buyer and held up to the time of buyer's cancellation or, for correspondence courses, the number of correspondence lessons submitted by the buyer prior to cancellation, by the total number of classes or lessons contained in the course, and then by multiplying the total contract price by the result thereof. This amount shall constitute the buyer's total obligation. The difference between this amount and the amount the buyer has already paid the seller shall constitute either the buyer's refund or the amount of the buyer's remaining obligation to the seller. (3) Within ten (10) business days of the date of notification of cancellation, the seller must provide the buyer with his correct refund payment, if any, and must cancel that portion of the buyer's indebtedness that exceeds the amount due the seller under the refund formula of this Rule.

(g) Disclosure of cancellation and refund. (1) The seller shall furnish the buyer with a fully completed copy of the buyer's enrollment contract and in close proximity to the space reserved in the contract for the buyer's signature, and in bold face type of at least ten (10) points, include the following statement:

> NOTICE TO THE BUYER: DO NOT SIGN THIS CONTRACT BEFORE READING THE PROVISIONS UNDER THE CAPTION "CANCELLATION AND REFUND".

(2) For correspondence courses of study, the seller shall include in the contract in bold face type of at least ten (10) points the following provisions:

CANCELLATION AND REFUND

> YOU ARE FREE TO CANCEL THIS CONTRACT AT ANY TIME. YOU WILL HAVE TO PAY ONLY FOR LESSONS SUBMITTED TO THE SCHOOL PLUS A REGISTRATION FEE OF FIVE PERCENT (5%) OF THE TOTAL CONTRACT PRICE, NOT TO EXCEED TWENTY-FIVE DOLLARS ($25).
>
> YOU MAY CANCEL THE CONTRACT BY MAILING OR DELIVERING TO THE SCHOOL A SIGNED AND DATED COPY OF THE "NOTICE OF CANCELLATION" SENT TO YOU BY THE SCHOOL OR BY MAILING OR DELIVERING TO THE SCHOOL YOUR OWN WRITTEN LETTER OF CANCELLATION. CANCELLATION WILL BE EFFECTIVE ON THE DATE OF MAILING OR DELIVERY. YOU MAY ALSO CANCEL BY FAILING TO SUBMIT A LESSON FOR NINETY (90) DAYS.
>
> THE AMOUNT YOU WILL HAVE TO PAY FOR THE LESSONS SUBMITTED WILL BE DETERMINED BY DIVIDING THE NUMBER OF LESSONS SUBMITTED UP TO THE TIME OF YOUR CANCELLATION BY THE TOTAL NUMBER OF LESSONS CONTAINED IN THE COURSE. IF, PRIOR TO CANCELLATION, YOU HAVE PAID MORE THAN THIS AMOUNT PLUS THE REGISTRATION FEE, THE EXCESS WILL BE REFUNDED TO YOU WITHIN TEN (10) BUSINESS DAYS.

(3) For residence courses of study, the seller shall include in the contract in bold face type of at least ten (10) points the following provision:

CANCELLATION AND REFUND

YOU ARE FREE TO CANCEL THIS CONTRACT AT ANY TIME. YOU WILL HAVE TO PAY ONLY FOR THOSE CLASSES THE SCHOOL HAS HELD PRIOR TO YOUR CANCELLATION PLUS A REGISTRATION FEE OF FIVE PERCENT (5%) OF THE TOTAL CONTRACT PRICE, NOT TO EXCEED TWENTY-FIVE DOLLARS ($25).

YOU MAY CANCEL THE CONTRACT BY MAILING OR DELIVERING TO THE SCHOOL A SIGNED AND DATED COPY OF THE "NOTICE OF CANCELLATION" SENT TO YOU BY THE SCHOOL OR BY MAILING OR DELIVERNG TO THE SCHOOL YOUR OWN WRITTEN LETTER OF CANCELLATION. CANCELLATION WILL BE EFFECTIVE ON THE DATE OF MAILING OR DELIVERY. YOU MAY ALSO CANCEL BY NOT ATTENDING SCHEDULED CLASSES NOR IN ANY OTHER MANNER UTILIZING THE SCHOOL'S FACILITIES FOR THIRTY (30) DAYS.

THE AMOUNT YOU WILL HAVE TO PAY FOR THOSE CLASSES THE SCHOOL HAS HELD WILL BE DETERMINED BY DIVIDING THOSE CLASSES HELD UP TO THE TIME OF YOUR CANCELLATION BY THE TOTAL NUMBER OF CLASSES CONTAINED IN THE COURSE. IF, PRIOR TO CANCELLATION, YOU HAVE PAID MORE THAN THIS AMOUNT PLUS THE REGISTRATION FEE, THE EXCESS WILL BE REFUNDED TO YOU WITHIN TEN (10) BUSINESS DAYS.

(4) For a combination correspondence and residence course of study, the seller shall include in the contract in bold face type of at least ten (10) points the following provisions:

CANCELLATION AND REFUND

YOU ARE FREE TO CANCEL THIS CONTRACT AT ANY TIME. YOU WILL HAVE TO PAY ONLY FOR THOSE CORRESPONDENCE LESSONS YOU SUBMITTED TO THE SCHOOL PRIOR TO YOUR CANCELLATION PLUS A REGISTRATION FEE OF FIVE PERCENT (5%) OF THE TOTAL CONTRACT PRICE, NOT TO EXCEED TWENTY-FIVE DOLLARS ($25).

YOU MAY CANCEL THE CONTRACT BY MAILING OR DELIVERING TO THE SCHOOL A SIGNED AND DATED COPY OF THE "NOTICE OF CANCELLATION" SENT TO YOU BY THE SCHOOL OR BY MAILING OR DELIVERING TO THE SCHOOL YOUR OWN WRITTEN LETTER OF CANCELLATION. CANCELLATION WILL BE EFFECTIVE ON THE DATE OF MAILING OR DELIVERY.

YOU MAY ALSO CANCEL BY FAILING TO SUBMIT A CORRESPONDENCE LESSON FOR NINETY (90) DAYS OR BY NOT ATTENDING SCHEDULED CLASSES NOR IN ANY OTHER MANNER UTILIZING THE SCHOOL'S FACILITIES FOR THIRTY (30) DAYS.

THE AMOUNT YOU WILL HAVE TO PAY FOR THE LESSONS SUBMITTED AND THE CLASSES HELD WILL BE DETERMINED BY DIVIDING THOSE CORRESPONDENCE LESSONS SUBMITTED AND THOSE RESIDENCE CLASSES HELD UP TO THE TIME OF YOUR CANCELLATION BY THE TOTAL NUMBER OF CORRESPONDENCE LESSONS AND RESIDENCE CLASSES CONTAINED IN THE COURSE. IF, PRIOR TO CANCELLATION, YOU HAVE PAID MORE THAN THIS AMOUNT PLUS THE REGISTRATION FEE, THE EXCESS WILL BE REFUNDED TO YOU WITHIN TEN (10) BUSINESS DAYS.

(h) Method of cancellation. (1) After buyer has signed and affirmed an enrollment contract, seller shall furnish buyer with a postage pre-paid card, plus duplicate card, addressed to seller and captioned:

NOTICE OF CANCELLATION
I HEREBY CANCEL THIS CONTRACT

____
(Date)

____
(Buyer's Signature)

The buyer's cancellation is effective on the date that the buyer mails or delivers to the seller a signed and dated copy of the above described cancellation notice or any other written notice or, in the alternative;

(2) The buyer's cancellation is effective on the date that buyer gives the seller constructive notice of his intention to cancel his contract by failing to attend residence classes or failing to utilize residence instructional facilities for such a period of time, of 30 days or less, that the seller should reasonably conclude that the buyer has cancelled the contract; or for correspondence course of instruction, by failing to submit a lesson for any period of 90 days.

(i) Packaged courses and/or services. Where seller offers a course of instruction involving two or more segments, and sells them together as a unit at a single price, then seller shall add the segments together and use the entire period in calculating buyer's refund, even if one or more of the segments is offered as "free". Where seller offers a course of instruction consisting of both correspondence lessons and residence classes, the total number of lessons and classes shall be added together for the purpose of calculating the refund.

III. Section by Section Description of Recommended Rule

A. Introduction

In this section of the Report, we will briefly describe the revised Rule which we recommend that the Commission adopt in light of the available evidence. The purpose here is not to present a detailed justification for each provision or an explanation of the factors that led to various Rule modifications. Rather we seek here merely to explain the major provisions of the Rule and changes from the original proposed Rule. Section IV of this part will contain in detail the rationales for the provisions the Bureau recommends and the changes it has made.

The discussion below follows a uniform format of generally describing the scope and purpose of the revised paragraphs of the Rule, and then providing a more detailed discussion of each subparagraph of the Rule. This is followed by a brief comparison of the revised Rule to the Rule as originally published. Although the major remedies originally proposed have remained unaltered in principle, we have undertaken to rework some provisions in an effort to streamline the Rule, make its requirements more comprehensible, and meet certain technical problems.

B. Paragraph (a) - Employment and Earnings Claims

Paragraph (a) of the Rule sets forth the requirements to be met for representations and claims made by schools concerning jobs, employment opportunities and earnings.

Revised Version: Paragraph (a) allows schools to engage in jobs and earnings advertising, but requires certain disclosures to be made if the claims themselves are made. As further explained by definitions (r), (s) and (t), jobs and earnings advertising typically consists of four categories: (a) general employment claims ("electricians in big demand"); (b) general salary or earnings claims ("Most electricians earn $30,000 a year."); (c) specific employment claims ("Students who attend this school get jobs as electricians."); and (d) specific salary or earnings claims ("Our students earn $30,000 a year as electricians.")

If a school wishes to engage in written or broadcast advertising that makes representations that fall within the purview of paragraph (a), it must accompany those advertising representations with two specific disclosures: (1) a statement indicating that the advertised claims are not a prediction or guarantee of employment success, and informing the prospective enrollee to read the accompanying disclosures; and (2) the employment and earnings disclosures set out in paragraph (b)(3) of the Rule. The first statement required by paragraph (a) is newly added to the revised Rule. The disclosures referred to in paragraph (a) regarding the school's actual track record are identical to those described under paragraph (b)--Affirmative Disclosure of Drop-Out and Placement Record.

Under the revised format, a school is permitted to make both general and specific claims so long as it has obtained and thereafter disclosed the relevant track record data described in paragraph (b) of the Rule.

Paragraph (a) additionally requires that the disclosures which accompany the advertised claims must be made in a fashion and form that make them readily ascertainable to the reader or listener.

Finally, paragraph (a) allows schools offering new courses[2] to use generalized job and earnings claims in their advertising.[3] However, in place of the track record disclosures required of other courses, new courses must accompany their generalized job claims with the disclosure which appears in paragraph (b)(7)-- *i.e.*, a disclosure setting out some of the difficulties with the use of this generalized data.

Published Version: Compared to the Rule as originally published, paragraph (a) has resulted in the following changes:

(1) Generalized claims about jobs and earnings which are written or broadcast are now permitted as long as the required disclosures are made. This replaces the absolute prohibition of generalized claims in the originally published version;

(2) Written or broadcast specific claims about jobs and earnings, previously *limited* solely to those claims that could be substantiated by the school's actual knowledge of the employment and salaries obtained by its students, are now permitted if *accompanied* by the required disclosures;

(3) Standards for information that would constitute adequate substantiation for specific claims have been amended, simplified, and made a part of paragraph (b). Thus, for purposes of track record disclosures, paragraphs (a) and (b) are now identical;

(4) The format in which the specific claims were to be made has been eliminated. Since the recommended Rule allows specific claims to be made if disclosures are also made, that part of the original Rule setting out the format of specific claims is no longer required;

(5) New courses were not granted any special treatment in the original Rule. Indeed, by virtue of the ban on generalized claims and the requirement that specific claims be confined to a school's actual track record, new courses could not make any

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[2] *See* Definition (1) *supra*.

[3] Because a new course cannot, by definition, have any track record, it is impossible to have information available for specific claims.

form of job or earnings claim. The recommended Rule allows new courses to make generalized job claims.

C. Paragraph (b) - Affirmative Disclosure of Drop-Out Rate and Placement Record

Paragraph (b) describes disclosures that must or may be made regarding a course's drop-out rate and placement record. Subparagraph (b)(1) details drop-out rate disclosures that all schools must include in their Disclosure and Affirmation Form as described in paragraph (c). Subparagraphs (b)(2) and (b)(3) describe placement and salary disclosures that must accompany advertised job and earnings claims, and must be included in the Disclosure and Affirmation Form if any oral or written job or earnings claims are made. Subparagraph (b)(4) describes the substantiation schools must have to count an individual as placed pursuant to the disclosures in subparagraph (b)(3).

Subparagraph (b)(5) specifies an additional disclosure schools may include at their option on the Disclosure and Affirmation Form concerning the fact that some students enroll in the school's courses for avocational purposes. If the school does not make job or earnings claims, subparagraph (b)(6) details four disclosures from which schools choose one to include on the Disclosure Form. These four statements pertain to the various factors which may have led a school to avoid making job and earnings disclosures.

Revised Version - Drop-Out Disclosures: Subparagraph (b)(1) requires that all schools, whether they make job or earnings claims or not, disclose on the Disclosure and Affirmation Form each separate course's drop-out and graduation rates. The manner of calculation of these rates differs depending on which of three types of courses are involved--residence courses with fixed class schedules, residence courses without fixed schedules, and correspondence courses.

For residence courses with fixed class schedules the school must disclose for the course's most recent graduating class the number of enrollees, the number and percentage who graduate, and the number and percentage who drop out. The "most recent graduating class" is the one that graduates at least four months before the disclosure is made.

For residence courses where students study at their own pace (and there are thus no fixed graduating classes), the disclosures are made for students who enrolled during a specified period of time--the two most recent base periods. (A base period under the Rule is a six-month period from January 1 to June 30, or July 1 to December 31.) The drop-out disclosures are thus made for students who enrolled during a year-long period beginning either on January 1 or July 1. The "most recent two base periods" is the year-long period beginning on January 1 or July 1 that ended at least eight months before the disclosures were made.

The school must disclose for those students enrolled in the two most recent base periods the number and percentage who graduated, who dropped out, and who are still actively enrolled.

Correspondence courses as well as courses that have correspondence and residence components both have to make the same type of drop-out disclosures.[4] These disclosures parallel those for residence courses without fixed class schedules by utilizing the base periods format.[5] For all of these types of schools, "non-starts" are not considered enrollees, and thus only students who begin the course but fail to complete are considered drop-outs.[6]

If a course is too new to be able to provide statistics about drop-out rates, subparagraph (b)(1)(iv) provides an alternate disclosure stating that the course is too new for the school to know what the drop-out rate is.

Published Version - Drop-Out Disclosures: The revised Rule has amended the originally proposed Rule in the following ways:

(1) Residence courses that do not have fixed graduating classes now have a method of calculating drop-out rates specifically designed for that type of course;

(2) For correspondence schools, the originally published Rule derived the drop-out rate by taking the ratio of students who enrolled in an earlier year--but dropped out in the most recent year--to the number of students who enrolled in the most recent year, thus comparing two somewhat different statistics. The revised Rule takes the ratio of drop-outs who enrolled in an earlier year to the number of enrollees in that same earlier year;

(3) The original Rule required disclosure only of the drop-out rate. The new Rule discloses drop-out rates, graduation rates, and the percentage still enrolled. This accounts for all major categories of the school's students;

(4) The published Rule made no special provision for new courses--the new Rule does;

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[4] See definition (m) supra for a description of combination courses.

[5] Correspondence schools are given four base periods (two years) upon which to base their data, rather than two base periods (one year) for certain residential schools.

[6] See paragraph (b) of Definitions supra.

(5) The original Rule would have treated combination courses as residence courses for purposes of the disclosure. The new Rule will treat them as correspondence courses. This treatment is more consonant with their method of operation since a major portion of the instruction is conducted by correspondence lessons;

(6) The original Rule counted non-starts in the drop-out statistics. The revised Rule does not.

Revised Version - Placement and Salary Disclosures: Unlike the drop-out rate disclosures of subparagraph (b)(1), the placement information detailed in subparagraphs (b)(2) and (b)(3) is only required if job or earnings claims are made by the school. However, like drop-out rate disclosures, the method of calculating rates differs with the type of course.

For residence school courses with fixed graduating classes, the school must disclose information about the experience of the most recent graduating class, as most recent graduating class was described above. It must disclose the number and percentage of total enrollees who got related jobs within four months of leaving the school and the number and percentage of total graduates who got related jobs within four months. In addition, the school must break down these statistics by salary ranges in two thousand dollar increments.

Schools that offer residence courses without fixed class schedules must disclose the same information for students enrolled in the two most recent base periods. Correspondence and combination courses must make the same disclosures for students enrolled in the most recent four base periods.

Before a student can be considered as placed, and thereby to have increased the school's placement rate, the school must keep records substantiating that placement. The records must include the student's name, a means to contact him--his address or telephone number and the name of his employer--and the name or title of the job or position obtained. The school must also have information showing that the student got a job within four months of leaving the school and the salary range obtained.

The seller may, at its option, add to the above described placement disclosures a statement, in language mandated by the Rule, that some students also take the course for avocational purposes.

If the seller does not make any oral or written job or earnings claims, and thus is not required to make placement disclosures, it must select one of four possible disclosures stating that, for various reasons, the sellers cannot or will not make job or earnings claims. The language of these disclosures is mandated by the Rule.

Briefly, these four statements cover situations where the school does not keep track record data, does not want to discuss such data whether it keeps the data or not, enrolls large numbers of students who do not enroll to obtain jobs, or is too new to have track record data. The school is free to select the disclosure that applies best to its situation.[7]

Finally, the recommended Rule allows schools offering new courses to use generalized jobs and earnings claims but not specific claims. If they do use generalized claims, they must include on the Disclosure and Affirmation Form a statement that the course is new and the school has no knowledge of actual placement and salary data and that the use of generalized data has certain difficulties which lessen its predictive value.

Published Version - Placement and Salary Disclosures: The recommended Rule amends that originally proposed in the following ways:

(1) Changes have been made for correspondence schools and residence courses without fixed class schedules in creating base periods that parallel those made in calculating drop-out rates. The original version of the Rule provided no special consideration for residential schools that had flexible schedules and compelled correspondence courses to calculate placement rates by comparing a fixed one-year period with unrelated periods. The use of base periods in the recommended Rule cures these difficulties;

(2) The original Rule required substantiation of the enrollees' net salaries and disclosure in increments of $1000. The new rule requires substantiation of gross salary and disclosure in increments of $2000;

(3) The other substantiation requirements have been reduced for the school. The school need only keep records of the student's address or telephone number, not both. In addition, the employer's address and telephone number are no longer required. The date the job was obtained can be substituted by any evidence showing the job was obtained within the established four-month period;

(4) The requirement that the student obtain a job within three months has been extended to four months;

(5) The revised Rule allows an additional disclosure telling the consumer that while the placement rate is a certain percentage, some students may also enroll for avocational reasons;

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[7] Thus, for schools that do not make job and earnings claims, their Disclosure Forms will contain: (1) the school's drop-out rate; (2) one of the four disclosures described herein; and (3) the affirmation statement.

(6) The original Rule required the school to make a single disclosure if the school did not make any job or earnings claims. That disclosure included the phrase that the school was not a vocational school. That phrase has been deleted. In addition, the school may choose among four disclosures reflecting different types of circumstances in which the schools may find themselves;

(7) The published Rule allowed schools offering new courses to make job and earnings claims in the form of job commitments obtained by employers. The revised Rule allows schools offering new courses to disclose that since its course is new, no specific job or earnings claims can be made and that generalized information is provided but should be treated cautiously;

(8) The published Rule required residence course placement disclosures to be based on the experiences of enrollees who resided at the time of their enrollment in the metropolitan area or state where the disclosure was made. This requirement has been dropped in the new Rule.

D. Paragraph (c) - Method of Making Disclosures

The purpose of paragraph (c) is to delineate the form and method to be followed in making the disclosures required or permitted by paragraph (b) when used in the Disclosure and Affirmation Form.

Revised Version: Paragraph (c)(1) provides that any disclosure required or permitted by paragraph (b) must appear on a Disclosure and Affirmation Form ("Form"), which must follow one of the formats specified in the Appendices to the Rule.

The Rule provides that the Form be mailed to the student and it can be mailed only after the student has executed his enrollment contract (Paragraph (c)(1)). The Form must be in duplicate, and at the bottom of the Form a "Notice to the Buyer" must appear advising the prospective enrollee that his enrollment must be affirmed prior to its taking affect. The Notice has been redrafted to be more readily understandable to the consumer.

Paragraphs (c)(1) and (c)(2) provide that the only information that can appear on the Form is that which is required or permitted by the provisions of the Rule and that the Form must be mailed to the consumer in a manner that isolates it from other written material sent to the consumer.

A new clause has been added to paragraph (c)(1) to indicate that schools which operate wholly through the mails and which have no oral communication with the consumer at any time either directly or through agents are relieved of that part of the requirements of paragraph (c)(1) which mandates that the Form be mailed to the consumer only after he has signed his enrollment contract with the school. Schools that fall within the scope of this exception may mail the required Form to the consumer at any time during the enrollment process.

Published Version: The revised version of paragraph (c) has been recast from several sections that appeared in other portions of the Rule as originally published. Therefore, in analyzing the published version of those provisions that relate to revised paragraph (c), we will draw from several sources. The changes made by revised paragraph (c) would:

(1) Eliminate the need for use of certified mail when mailing the Disclosure and Affirmation Form;

(2) Allow schools which engage in no oral contact with the consumer to mail the Form to the consumer at any time during the pre-enrollment process;

(3) Remove the format for making required and permitted disclosures and put them in the Appendices to the Rule;

(4) Remove paragraph (b)(5) and revise the required and permitted disclosures for new schools and new courses of study;

(5) Rewrite the Notice in paragraph (e)(1) advising consumers of their affirmation rights in a more readable form and place it in revised paragraph (c)(2), mentioned previously;

(6) Provide a separate affirmation statement for schools that qualify for the exception in paragraph (c)(1) by operating solely through the mails;

(7) Provide several different types of examples of what Disclosure and Affirmation Forms should look like by expanding the number of Appendices.

E. Paragraph (d) - Affirmation and Cooling-Off Period

Paragraph (d) establishes a cooling-off period during which the prospective enrollee must affirm his enrollment contract before it can become effective. This affirmation/cooling-off period serves as a vehicle through which the disclosures required by paragraph (b) can be delivered to the consumer in a manner that augments and insures their utility to the consumer's decision whether or not to enroll.

Revised Version: Paragraph (d)(1) sets out a requirement that no contract can be valid unless the school has fully complied with both the provisions of paragraph (c)--which establishes the form, content and related attributes of the Disclosure and Affirmation Form--and paragraph (d)(3)--which establishes standards for the type of sales contact that may occur once the reaffirmation period begins to run. This paragraph makes it clear that a buyer's signature on an affirmation form must be obtained within the parameters of the Rule's affirmation requirements in order for the enrollment contract to be valid.

The operative concept of affirmation appears in paragraph (d)(2). Unlike the originally published Rule provision, which called for the affirmation itself to occur within a ten-day period, paragraph (d)(2) adopts no such formal limit. Paragraphs (d)(1) and (d)(2) in conjunction allow for affirmation to occur at any time after an enrollment contract has been signed, including delivery of the duly signed Disclosure and Affirmation Form to the school on the first day of class or mailing it with the first home study lesson (if acceptable to the school).

However, paragraph (d)(2) does establish a time limit on the retention of any monies by the school in the face of a contract that has not yet been affirmed. If the student has given the school any monies or signed any evidence of indebtedness in the pre-enrollment stages of the sales process, and the consumer has not affirmed within 21 days, that money or instrument must be returned to the consumer within another 21 days. Thus, this paragraph seeks to allow schools and students greater flexibility in determining when affirmation will occur, but also protects the consumer from having a downpayment held for an inordinate period of time.

The form, content, and manner of communication between the school and consumer during the affirmation period is set out in paragraph (d)(3). Once the consumer has received the mailed Disclosure and Affirmation Form, the school is proscribed from: (1) initiating oral communication with the student; or (2) engaging in any communication in the consumer's home concerning employment, earnings, or drop-outs. If the school engages in this type of communication during the affirmation period, any affirmation form and/or contract signed by the consumer becomes invalid as provided by paragraph (d)(4).

This paragraph does not prohibit the school from initiating any form of written communication, or from discussing with the student issues related to the student's enrollment that do not pertain to jobs, earnings, or drop-outs (i.e., procedures for enrollment; assistance in complying with VA and HEW regulations for obtaining benefits, loans, or grants; curriculum requirements, etc.), or from engaging in oral communciation about jobs, earnings, or drop-outs in a location other than the buyer's home.

If the school has engaged in any of the forms of contact that are circumscribed by paragraph (d)(3), paragraph (d)(4) requires that the school return to the student any monies he may have paid and/or cancel any evidence of indebtedness signed by the student even if the student has affirmed. This return of monies or cancellation of any instrument must occur within the same time period as if no affirmation had been made. A failure to return monies or cancel instruments in a timely fashion is construed to be an independent violation of the F.T.C. Act over and above the invalidation of the contract called for in paragraph (d)(3).

Paragraph (d)(5) is a new provision which states that the requirements set out in paragraphs (d)(1) and (d)(3)--*i.e.*, that no contract can be effective unless affirmed, and affirmed in a manner that has not utilized the procedures restricted by paragraph (d)(3)--must be incorporated into the enrollment contract itself.

Paragraph (d)(6) clarifies the fact that firms subject to the Vocational School Rule are relieved from complying with the F.T.C.'s Trade Regulation Rule concerning a Cooling-Off Period for Door-to-Door Sales.

Published Version: The originally published paragraphs (c) through (e) have been modified as follows:

(1) The ten-day period has been eliminated and replaced with an unspecified affirmation time limit. Note, however, that even in the face of this unspecified time period, the school cannot retain any monies or evidences of indebtedness longer than 42 days after the unaffirmed contract has been signed;

(2) The time period for refund of monies to a consumer who has not affirmed the contract has been extended from 10 to 21 days;

(3) Notifications of the buyer's reaffirmation rights has been reworded to make them more readable;

(4) Prohibitions on all written communication during the reaffirmation period have been removed;

(5) Remaining restrictions on contact during the reaffirmation period are no longer independent violations of the Rule, but only result in invalidation of the signed contract and reaffirmation form; and

(6) The requirements of affirmation have been included within the contract itself.

F. Paragraphs (e) through (h) - Refunds Upon Cancellation

Paragraph (e) prescribes the refund a student receives upon dropping the course. Paragraph (f) mandates the manner in which the school must disclose refund rights to the student. Paragraph (g) describes the method of cancellation of the student's enrollment, and paragraph (h) explains how combination courses are treated for the purposes of refunds.

Revised Version: If an enrollment contract is affirmed and the student drops out, the student's total obligation is for the number of classes held or the lessons sent in up to the time of cancellation, plus a registration fee of $25. The cost to the student of each class held or lesson sent in is its equal share of the total contract price (paragraph (e)). Thus, one lesson or class out of twenty costs five percent of the total contract price. Moreover, if a buyer affirms an enrollment contract but cancels before submitting a lesson or attending a class, the buyer's sole obligation is the $25 registration fee.

Within three weeks of cancellation, the student must receive a refund if one is owed, or the school must cancel that portion of the student's indebtedness that exceeds the student's obligation (paragraph (e)(3)).

The school must disclose this refund policy and the manner of cancellation in a notice that is incorporated in the contract (paragraph (f)). The exact language is mandated. The school must also provide the student within ten days of affirming the contract a cancellation form that also includes the notice concerning the applicable refund policy and methods of cancellation.

The student's cancellation of the contract and the student's entitlement to receive a pro rata refund become effective when the school receives the cancellation notice or some other written notice, or if the student cancels by constructive notice (paragraph (g)). Constructive notice includes the student's failure to participate in the course of study as follows:

(1) For a residence course with fixed class schedules, if a student does not attend for a week, or for 15 percent of the course, whichever is less, the student is considered cancelled at that time. (But, if the student does not show up for the first class or any other class thereafter, the student is deemed to have cancelled before the first class.);

(2) Constructive cancellation for a residence course without fixed class schedules, where the student studies at his own pace, is a 60-day gap in the student's participation;

(3) For a correspondence course, constructive notice is a 120-day gap in submission of lessons.[8]

The student is deemed to have cancelled when the time has elapsed for constructive notice. The school is then required to mail a refund within three weeks. However, the student's cancellation by constructive notice is not effective and the student remains enrolled if the student states in writing a wish to remain enrolled. The Rule allows students to revive their enrollment even if they cancel by constructive notice during the three-week period when the school is processing the refund, or even after the refund is sent. The time period for calculating constructive notice begins anew at the time the student sends in written notice stating a wish to remain enrolled.

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[8] See definition (n) supra.

Combination correspondence and residence courses have to be treated in a special manner (paragraph (h)). Whenever the school mentions the price of a combination course, it must separately designate the price of the correspondence and residence sections. It then calculates the student's obligation for each section, totals them, and adds the $25 registration fee. For example, a course costs $1000, with $800 designated for the correspondence portion, and $200 designated for the residence portion. If a student completes all of the correspondence and half of the residence portion, the student's obligation is $900 plus a $25 registration fee, or $925.

Cancellation by constructive notice for combination courses is the same as for other types of courses. While a student participates in any particular portion of the course, contructive notice follows the procedures that correspond to that type of course, i.e., correspondence, residence with fixed class schedules or residence without fixed class schedules.

Published Version: The following changes have been made in the refund section:

(1) The registration fee is now $25, not $25 or 5 percent, whichever is less;

(2) Refunds must be made in 21 days, not 10 days as in the original Rule;

(3) The notice to the consumer disclosing the refund policy and the cancellation card have been changed to be more readable;

(4) The new Rule has added a requirement that the notice to the consumer disclosing the refund policy be sent with the cancellation card. That cancellation card no longer must be postage pre-paid, but it must be delivered within ten days of affirmation;

(5) Constructive notice for cancellation of correspondence courses has been lengthened from 90 to 120 days;

(6) Constructive notice for all residence schools was 30 days. Now schools without fixed class schedules have a 60-day period; schools with fixed class schedules have a 7-day period or 15 percent of the course, whichever is less;

(7) The Rule has been changed to make it clear that a non-start is obligated only for the registration fee, no matter how the person cancels;

(8) The Rule has been changed to allow students to remain enrolled even after being unintentionally cancelled by constructive

notice, if they send in a written notice indicating their intention to remain enrolled;

(9) The Rule has been amended to require separate price designations for the correspondence and residence portions of a combination course;

(10) The original Rule required that for combination courses the residence classes and correspondence lessons be treated the same and be combined. The pro rata refund would be based on that combination. The new Rule treats each part separately;

(11) The Rule has been clarified to explain how constructive notice works for combination courses;

(12) A number of technical changes have been made allowing schools to calculate the refund on the basis of hours or classes, making sure the total obligation is not more than the total contract price, and clarifying what that total obligation is.

G. Appendices

Both the originally published Rule and the revised version have appendices which provide examples of the form and substance of typical Disclosure and Affirmation Forms. Because of changes in the recommended Rule, the number of appendices has been increased.

Moreover, the revised Rule makes clear what previously may have been ambiguous--that the appendices indicate the required format of the Disclosure and Affirmation Form. Every school covered by the Rule must employ the format set out in the appendices as applicable to its circumstances.

H. Definitions

Paragraph (a) defines buyer as any individual who seeks to enroll in a course, but individuals are exempted if they do not pay for the course themselves and are not the ones who make the decision as to which course to enroll in. For example, if an employer enrolls a worker, or a community college subcontracting with a cosmetology school gives credit for one of its students enrolling in a particular vocational school, that student is not covered by the Rule. But a student enrolled in the FISL program or with veterans' benefits would be included within the definition of buyer.

Paragraph (b) defines enrollee as any buyer who has affirmed and started the course. Non-starts are not included.

Paragraph (c) defines a course as any series of lessons or classes sold together purporting to qualify individuals for jobs or improved skills in various types of vocations. However, two types of courses are exempted--courses which consist of accredited college level instruction that are generally applicable to a bachelor's degree and courses costing less than $100. Provision is made so that sellers who enroll students in a number of courses at the same time, each under $100, are not exempted; nor are courses exempted if the seller offers other courses covered by the Rule.

Paragraph (d) defines the *total contract price* as an all-inclusive term for expenses related to the course.

Paragraph (e) defines a *seller* to be any type of business, individual, or organization offering courses, as courses are defined in paragraph (c). However, the definition excludes from its coverage any seller whose total enrollment in any calendar year is less than 75 enrollees. This exclusion relates expressly to 75 "enrollees"--*i.e.*, buyers who have affirmed *and* attended at least one class or submitted one lesson.

Paragraph (f) defines a *graduate* in accordance with normal usage. Paragraph (g) defines *fail to complete* as the act of dropping out. Paragraph (h) defines *actively enrolled* as those who have neither graduated nor dropped out.

Paragraph (i) defines a *base period* as a particular six-month period. The *most recent base period*, as described in paragraph (j), is the most recent one that ends not less than four months before the school makes mandated disclosures. The *most recent graduating class*, as defined by paragraph (k), is the most recent class that graduated not less than four months before the school makes mandated disclosures.[9]

Paragraph (l) defines a *new course* as a course substantially different in content and occupational objective than any other offered by a seller. In addition, the course must not have been in existence long enough to have at least one most recent graduating class for a residence course with fixed class schedules, at least two most recent base periods for other residence courses, and at least four most recent base periods for correspondence courses.

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[9] It may be useful at this point to briefly describe the staff's rationale for selecting the base period concept for home study schools, and residential schools without fixed classes. In any type of school where there are no traditional classes--*i.e.*, a group of students entering and graduating at approximately the same time--there is no fixed reference point for calculating the data required by the Rule. The original Rule selected the most recent calendar year for home study schools as a reference point but this period was suspect since some students graduating or dropping out in that year may have enrolled in earlier years.

The base period concept freezes a set period of time in the past. The revised Rule then allows a period of time after the base period (either 4 or 8 months) to allow the school to determine what has happened to all those who *enrolled* during the base period. Moreover, since the base period changes every six months, data calculations are kept more timely than the original Rule's one-year period.

Paragraph (m) defines a combination course as a course that combines correspondence lessons and residence classes. For purposes of disclosures, combination courses are treated like correspondence courses. For purposes of refunds, they are treated in a special way as described in paragraph (h) of the Rule.

Paragraph (n) describes constructive notice in three instances. For a residence course with a fixed class schedule it means not attending classes for seven days or 15 percent of the course, whichever is less. For other residence courses it means failure to attend for 60 days. For correspondence courses it means failure to submit a lesson for 120 days.

Paragraphs (o) and (p) define residence courses with/without fixed class schedule. A course does not have a fixed class schedule if the student pays for only those classes he actually attends, as opposed to those being held while he is enrolled. In addition, the course must have rolling enrollments, flexible class schedules, or staggered graduation dates. Other courses have "fixed class schedules."

Paragraph (q) defines an enrollment contract as any binding agreement or instrument entered into after the effective date of the Trade Regulation Rule.

Paragraph (r) defines a job or earnings claim as any express or implied claim concerning general job demand or salary level or specific jobs or salaries that can be obtained by enrolling in seller's course.

Paragraphs (s) and (t) further describe two types of job or earnings claims. General claims are those that make reference to the general state of the employment or earnings market now or projected in the future. Specific claims are those that make reference to the actual or anticipated success of seller's past, present, or future students.

Published Version: In order to simplify the Rule, we have taken many of the concepts included in the body of the original Rule and placed them in the definitions portion of the Rule. Thus, the published version did not include definitions for:

(1) graduate;

(2) actively enrolled;

(3) base period;

(4) most recent base period;

(5) most recent graduating class;

(6) constructive notice;

(7) course without fixed class schedule;

(8) course with fixed class schedule;

(9) enrollment contract; and

(10) job or earnings claims.

In addition, the definitions in the published version have been changed in the following ways:

(1) Buyer now exempts students who do not pay for or decide for themselves in which course to enroll. This is intended to exempt those situations where, for example, an employer enrolls an employee in a course as a continuing education endeavor;

(2) An enrollee cannot be a non-start;

(3) Courses under $100 are exempted as long as the requirements of definition paragraph (c) are met;

(4) Two-year courses acceptable for credit toward a bachelor of arts degree are exempted (the published version only exempted non-profit schools). The new Rule also clarifies that the exemption goes to the course, not to the seller in general, for all its courses;

(5) Seller exempts schools whose annual enrollment is under 75;

(6) Seller clarifies that the Rule applies only to vocational courses;

(7) Combination courses are treated as correspondence, not residence, courses for the purposes of the disclosures;

(8) New course has been changed to parallel the disclosure requirements; and

(9) New school has been eliminated.

IV. Basis for Recommended Trade Regulation Rule

A. Introduction

In Part I of this Report we analyzed in detail the evidence on the record regarding proprietary vocational schools, the students they enroll, their advertising, sales and enrollment techniques, their success (or lack of success) in graduating and placing student enrollees, the refund policies they have, modes of governmental and self-regulation, and their involvement in federal subsidy programs.

In general, the record demonstrates several different stages of abusive practices engaged in by proprietary schools. These stages roughly track the temporal sequence by which consumers become enrollees in these schools: the initial advertising campaigns to attract consumers to the school, direct contact with the school through its salespeople or admissions officers, actual enrollment in the school, and refund policies when students drop out. Based on the record, we are recommending a Rule that defines with specificity unfair and deceptive acts, and provides remedies to cope with the unique problems associated with each stage. The specific grounds for each recommended provision are described in detail in each of the following subsections.

It is important to note, however, that because of the varied types of practices that characterize each stage of the enrollment process, none of the remedies recommended here can, in isolation, cope with the different types of false, deceptive or unfair practices documented in the record. For example, as helpful as the affirmation provision may be in allowing consumers to reach dispassionate decisions, it cannot directly cure or wholly prevent deceptions associated with false job and earnings claims. These deceptions must be addressed by a separate requirement which calls for certain forms of disclosures. Thus, the provisions we are recommending are not interchangeable and adoption of one will not necessarily address, let alone cure, the problems pertinent to other areas.

With that in mind, we recommend that the Commission: (1) require that job and earnings advertising claims be accompanied by a contemporaneous disclosure of the school's own track record, and brief disclosure of the fact that generalized and specific claims are not a guarantor or predictor of placement success; (2) provide drop-out and graduation rate disclosures to each enrollee as well as placement and earnings disclosures if the school has made job and earnings representations; (3) allow consumers to have a period of time in which to analyze these disclosures and reach their purchase decisions; and (4) provide a strict pro rata refund to relieve consumers of the substantial economic burdens associated with withdrawing from the purchase of a commodity whose attributes cannot readily be fully evaluated or ascertained prior to purchase.

The factual predicates for these remedies have been set out in detail in Part I of this Report. We will not attempt to rehearse that detailed exposition of record evidence. In this section of the Report we describe the rationales that argue for adoption of these particular remedies in light of the facts laid out before.

B. Employment and Earnings Claims

The Rule the staff is proposing for adoption by the Commission requires in paragraph (a) that all written or broadcast job or earnings claims be accompanied by two separate disclosures which: (1) indicate that such claims should not be construed as a guarantee or prediction of placement success; and (2) provide actual data on the school's record of its students' placement and earning success.[1] For purposes of the Rule, a job or earnings claim is any claim which expressly or implicitly represents that students who attend the advertiser's course of study will obtain new or improved employment positions or salaries.

Job and earnings claims are of two basic types--general claims (*i.e.*, "computer programmers in big demand" "computer programmers earn large incomes"), and specific claims ("Our students get jobs as programmers. Our students earn large incomes.").[2] As the factual record in this proceeding makes clear, both types of claims appear frequently in all forms of advertising and solicitation utilized by proprietary vocational schools.[3] Indeed, the very nature of the product being offered for sale--vocational training--encourages schools to emphasize that new jobs, advancement in existing jobs, higher pay, and exciting careers are the expected outcome of the product being sold.[4]

Since the disclosures required to accompany these advertising claims are identical to those set out in the affirmative disclosure provisions of paragraph (b), we will postpone any discussion of many of the substantive issues raised by the disclosures themselves until our discussion of paragraph (b) of the Rule.[5] This section addresses a more limited question--the need for certain disclosures to appear contemporaneously with the job and earnings claims that are made by proprietary schools.

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[1] These latter disclosures are identical to those required by paragraph (b)(3) of the proposed Rule. *See* Part II, Section IV(C), *infra* for a complete description of this type of "track record" disclosure.

[2] *See* definitions (r), (s), and (t) of the recommended Rule *supra*.

[3] *See* Part I, Sections IV(B) and (D) and section V(C), *supra*.

[4] *See* Part I, Section IV(B), *supra*.

[5] *See* Part II, Section IV(C), *infra*.

Because the issues raised by generalized and specific claims are somewhat different, we will briefly separate them for purposes of discussion. However, we should note that the overriding concerns of paragraph (a) of the Rule--whenever students are deceived by false, unclear, or incomplete claims--are applicable to both types of claims.

1. Specific Employment and Earnings Claims

As briefly stated above, a specific employment or earnings claim is one that makes reference to the success or potential of the school's own students. The record shows that such claims are frequently made by proprietary schools.[6] Specific claims appear in several formats--testimonial letters, job guarantees, help-wanted advertising, claims of affiliation with government or major companies, listings of graduates who obtained jobs, references to placement departments or services, recitals of companies who have hired a school's graduates, or vague promises such as "be a draftsman."[7] Regardless of the format, however, the primary impact of the claims is the same--to convey the notion that students who enroll in the advertising school are successful in obtaining jobs.[8]

Also regardless of their format, these claims are usually misleading or deceptive. Explicit job guarantees are almost always deceptive since differences among students' capabilities and achievements, and fluctuations in job market demand, make it virtually impossible for any school to be sure of placing every enrollee in a suitable job. "Help wanted" classified advertising is misleading because it implies a job, not training, is being offered. Other patently false advertising includes representations that a school is a government placement agency, or so closely affiliated with major corporations as to insure employment.

The record demonstrates that consumers reading specific job claims understand them to mean that related jobs are available to typical students who enroll in the school.[9] Thus, except for those few schools with extremely high placement rates, these claims as understood by typical consumers are deceptive. We note the extensive evidence which indicates that while placement rates differ from school to school, the overall trend is for placement rates to be quite low.[10] In this regard the opportunities for those who graduate can be highly restricted,[11] to say nothing of the minimal success the typical enrollee faces.[12] By expressly or implicitly holding out the expectation of employment or earnings to an undifferentiated readership, the schools create potential or actual deception in a significant number of cases.

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[6] See Part I, Section IV(B)(1), supra.

[7] Id.

[8] See Part I, Sections IV(B)(1) and III(E), supra.

[9] See Part I, Section IV(B)(1), supra. Typical student reaction can be seen in the testimony of I. Pardo, former student, ITT Tech., Tr. 118; P. Filter, former student, CIE, Inc., Tr. 4261; and G. Hilty, former student, Control Data Corp., Tr. 70.

This deception can arise in several specific contexts. For example, citations to the testimonial letters of satisfied graduates who found jobs, even if correctly and accurately excerpted in the advertisement, ignore information on the status of other graduates and the extent to which the course actually assisted them in obtaining employment.[13] In this regard, these advertisements misrepresent the potential success of typical enrollees by incorrectly implying that the specific claim made is applicable to all enrollees.[14]

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[10] *See* Part I, Section VII(D)(1) and (2), *supra*.

[11] *See, e.g.*, the findings of W. Wilms in *A Comparison of the Effectiveness of Public and Proprietary Training*, Exhibit C-110, which indicates that as few as 20 percent of the *graduates* of certain courses find employment in training-related positions.

[12] The sizeable drop-out rates in this industry create a circumstance in which the typical enrollee is unlikely to ever become a graduate. This important fact is often overlooked by those who seek to promote the placement success ratio of the graduates only. *See, e.g.*, the statement of Katharine Gibbs Schools, Exhibit K-237. In Part I, Section VI(A) we have described the high industry-wide drop-out rates and the causes for these high rates.

[13] It should also be noted that citations to selected individual "success stories" can be misleading in other ways. For example, the fact that a student had previous training in the field or was already employed in the field prior to attending the school is important in assessing the informational content of the specific claim. The prospective enrollee may mistakenly assume that the testimonial reflects the success of a person in the prospective enrollee's position, while in fact the successful student was peculiarly qualified to obtain his or her job by virtue of prior training or employment in the field.

[14] *See* Part I, Section V(B)(1), *supra*. The principle that

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Even industry representatives recognize the deception that occurs when a school uses anecdotes as a substitute for more reliable data on student placement. For example, the Executive Director of the National Association of Trade and Technical Schools states:

> A relatively insignificant number of cases should not be used as a basis for advertising claims. The incidental achievements of a few persons, while perhaps providing an aura of great promise, are not sufficient grounds for embellishments in advertising.[15]

Rather vague claims as to the availability of placement services or a school's successful placement record--such as "Be a draftsman," "Earn up to $7 an hour," or "Our constant efforts have often resulted in more positions than the supply of qualified graduates"--can be equally deceptive. While the student takes them to mean that a job will be available if the student enrolls, the schools often have no substantiation for such claims, and in almost all cases a substantial number of enrollees, usually a majority, will not obtain such jobs or earn the claimed salary.[16]

Even when specific claims take the form of describing a school's actual placement performance, they have the tendency and capacity to be misleading because such claims are based on the school's own, unstandardized interpretation of that placement performance. In place of testimonials or other anecdotes, the advertising copy contains references to percentages or numbers of graduates placed and/or salaries obtained, or listings of graduates and employers who hired them.[17] The difficulty with these references is that they are selective interpretations of data which are subject to substantial methodological and contextual variances.[18] There are no accepted standards in this industry

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[14] (Continued)

testimonials and other forms of anecdotal substantiation may be legally insufficient is embodied in the Commission's extant Guides on Endorsements and Testimonials, 16 C.F.R. Part 255; 40 Fed. Reg. 22127 and 22146, May 21, 1975.

[15] See Report of the Senate Committee on Veterans' Affairs to Accompany S. 2784, p. 88, Exhibit H-77.

[16] See Part I, Section IV(B)(1), supra. See Part I, Section VII, supra for a discussion of the wide variances in placement success among schools.

[17] See Part I, Section IV(B)(1), supra.

[18] See the testimony of D. Laramore, career counselor, regarding the sophistication required to reach an informed choice on school selection, Tr. 29.

for accumulating, maintaining, and analyzing data on placement and earnings. In making claims about the success of their students in finding jobs or earning substantial wages, each school is free to define for itself what types of data will serve as the basis for its claims.[19] In reaching that decision, each school must address a series of important questions that are integral to a proper understanding of what the final statistics show: which jobs will be counted as training-related; how many students will be deemed graduates; whether graduates and drop-outs will both be included in final calculations; how students' vocational "intentions" will be identified; who will be deemed available for placement; how long after leaving the school a student must obtain a job in order to draw a connection between the course and the placement; whether students who were already working in a field prior to their enrollment will be counted as placed once they leave the school; and whether placement resulted from factors other than the school's training.

Since each school responds differently to these questions, prospective students can only guess the precise basis for the school's claim. But when the claim is made, schools almost never explain their method of calculating placement rates. Accordingly, the prospective student may again erroneously conclude that chances of placement success are significantly higher than they actually are.[20]

Thus, specific claims are almost always deceptive. The school, by making a claim which invariably fails to provide any qualifications or explanations, misleads the typical consumer who believes the claims are virtual promises of jobs. In fact, most schools do not have the placement records to back up their implicit claims. Particularly in light of the fact that many prospective enrollees in proprietary schools are vulnerable to this type of career/earnings pitch by virtue of their lack of education, sophistication and employment experience,[21] these claims must be carefully scrutinized because of their tendency and capacity to mislead the intended audience.

Moreover, the record shows that these specific advertising claims, even if not demonstrably misleading in all cases, are often unsubstantiated. Schools which frequently have no idea of graduates' success makes job claims anyway. Such unsubstantiated advertising is unfair under the Commission's Pfizer doctrine, since the advertiser has no reasonable basis for such claims at the time of their publication.[22] An unfair ad, whether or not it is actually false, can be subject to Commission action because the lack of substantiation creates the potential for injury to consumers.[23]

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[19] See the somewhat differing approaches of Bell & Howell Schools, Exhibit K-856, Control Data Corp., Exhibit D-207, and Lacaze Academy, Exhibit K-725.

[20] See, e.g., the testimony of T. Convey, Tr. 5682.

[21] See Part I, Section III(C)(D) & (H), supra.

The Record shows an appalling lack of substantiation for the multitude of job and earnings claims that are made. In the first instance, industry-wide placement rates belie any notion that even a small portion of these claims could be substantiated.[24] Moreover, when substantiation is requested, the schools' responses are uniformly inadequate and rely on anecdotes, guesses, estimations, projections, and generalized data.[25]

Specifically, the Pfizer doctrine spells out five criteria for assessing the unfairness of an advertising claim:[26]

(1) the specificity of the claim;

(2) the nature of the product being offered;

(3) the consequences if the claim is false;

(4) consumer reliance on the claim; and

(5) the accessibility of substantiation data.

Vocational school job and earnings advertising meets all five criteria quite directly and leads us to conclude that existing advertising is unfair as well as deceptive:

(1) These ads are precise in their approach and use exact terms: "Park Ranger" or "$4.58 an hour".[27] The advertisements are for a service, and they imply that the

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[22] Pfizer, Inc., 81 F.T.C. 23 (July 11, 1972).

[23] See H.W. Kirchner, 63 F.T.C. 1282 (1963); National Dynamics Corporation, Docket No. 8803, aff'd, 2d Cir. Docket No. 73-1754 (March 6, 1974).

[24] See Part I, Section VII(D), supra.

[25] For a complete discussion of substantiation experiences see Part I, Section VII(B), supra.

[26] 81 F.T.C. 23 at 64.

[27] See Part I, Section IV(B)(1), supra.

service will train a subscriber to learn a skill which will result in a job or other financial opportunity. There is no ambiguity about these claims.[28]

(2) The product offered is an important and significant one. The service purports to teach those who enroll in particular occupational skills in such a way that completion of the training should result in a job, marketable skill, or job improvement.[29] While the ads do not always expressly promise consumers that they will be placed in jobs, the juxtaposition of claims about jobs and earnings with descriptions of the school's type of course creates an inference of employability. Consumers believe that they are making a single investment in training that will enable them to maintain productive employment for the remainder of their working lives. This is a most important personal decision, replete with ramifications for society in general.[30]

(3) If the claim being made ultimately turns out to be inaccurate, as it often does, the consumer suffers both personal and financial injury as a consequence of his reliance on the claim.[31]

(4) As noted previously, these advertisements lead most consumers to expect employment after taking the course.[32] The representations exploit vulnerable consumers, who, by their very lack of prior training and their need to obtain career training are least likely to look behind the advertising claim. The fact that consumers will pay hundreds of dollars for courses demonstrates that the consumer feels he is purchasing a career opportunity and not merely a recreational diversion.[33]

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[28] See Part I, Sections IV(B) and III(E), supra.

[29] See Part I, Section II(B), supra.

[30] The Congress has determined that vocational training is a matter of utmost national concern and has invested billions of dollars in the area to encourage the consumer to purchase vocational careers. See Part I, Section VIII(C), supra.

[31] See Part II, Section V, infra for a brief description of consumer injury.

[32] See Part I, Sections III(E) and V(C), supra.

[33] See Part I, Section III(E), supra.

(5) The quality of substantation is insufficient to support the claims being made. As the Division's ad substantiation program indicates,[34] proprietary schools rarely have any data available to support their claims. Yet, such data is readily attainable and some schools already maintain some forms of this information.[35]

Therefore, even without any direct indication of falsity, the job and earnings claims utilized by proprietary schools are legally unfair, because the schools cannot provide supporting data which indicate that the ads and the inferences created by the claims are in fact accurate.

The record shows that proprietary schools make numerous specific job and earnings claims that are in many instances false on their face, and in other cases have the tendency and capacity to be deceptive because of the ambiguity of meaning or the absence of uniform criteria for collecting and reporting job and earnings information. Still other claims are unfair because they lack readily available substantiation. Without either restrictions on the use of such claims or provision of information to qualify the claims, consumers will continue to be deceived by the claims.

A broad spectrum of participants in this proceeding agreed that some form of constraint or mandatory disclosure was required to cure the deception created by the frequent and flagrant use of employment and earnings claims. These commentators included attorneys general and consumer agencies,[36] counselors,[37] state education departments,[38] legal aid attorneys,[39] students,[40] federal agencies and committees,[41] and information researchers and experts.[42] Even industry representatives recognize the need for correction:

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[34] See Unnamed Job Opportunity Advertisers, File No. 752-3034, Exhibit C-210.

[35] See Part I, Section VII(F), supra for a full discussion of the availability and costs of follow-up data.

[36] See, e.g., comments of F. Kelley, Assistant Attorney General of Michigan, Exhibit K-433; testimony of L. Winarsky, Assistant Attorney General of Ohio, Tr. 8540; testimony of L. Glick, Assistant Attorney General, State of Maryland, Tr. 3023; testimony of E. Gold, District Attorney, Kings County New York, Tr. 1325; testimony of E. Guggenheimer, New York City Commissioner of Consumer Affairs, Tr. 943; testimony of S. Mindell, New York Attorney General's Office, Tr. 919; and tesimony of B. Heveran, Assistant Attorney General of Illinois, Tr. 7359.

[37] See, e.g., testimony of Dr. R. Wasson, Tr. 1811; and testimony of D. Smith, American School Counselors Association, Tr. 4278.

> A prospective student is entitled to sufficient data to make an informed decision on training opportunities in institutions. Although it is recognized that advertising space limitations might restrict desirable explanations, the text should avoid abbreviated claims that might tend to be easily misunderstood. If an item is considered important enough to be included in advertising, it should be presented in a manner clearly understandable to anticipated readers. A school may not claim space limitations as a reasonable excuse for limited disclosure

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[38] *See, e.g.*, comments of the State of Utah, *System of Higher Education*, Exhibit K-53; State of Nebraska, Department of Education, Exhibit K-56; testimony of J. Harrington, Connecticut Department of Education, Tr. 274; and testimony of D. Stucki, Executive Director, Wisconsin Education Approval Board.

[39] *See, e.g.*, testimony of G. Yesser, Rhode Island Legal Services, Tr. 4556.

[40] *See, e.g.*, testimony of S. Keaton, former student, Bryman Schools, Tr. 3582; testimony of D. Parkhurst, former student, Career Academy, Tr. 266; testimony of T. Convey, former student, Blair College; testimony of R. Amico, former student, Control Data Corp., Tr. 63, and P. Filter, former student, Cleveland Institute of Electronics, Tr. 4261.

[41] *See, e.g.*, Federal Interagency Committee on Education, *Toward a Federal Strategy for Protection of the Consumer of Education (July 1975)*, Exhibit H-170; *Reducing Abuses in Proprietary Vocational Education*, 27th Report of the House Committee on Government Operations (December 1974), Exhibit H-168; and Department of Health, Education and Welfare, USOE, Guaranteed Student Loan Program, 45 U.S.C. Section 177.1 *et seq*.

[42] *See, e.g.*, Wilms, *The Effectiveness of Public and Proprietary Occupational Training*, Exhibit C-110; testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Tr. 9422; testimony of J. C. Ashman, Director of Special Research and Education Assessment Programs, Tr. 9495; Orlans, *Private Accreditation and Public Eligibility* (October 1974), Brookings Institute, Exhibit D-21; and Dr. K. Hoyt, various materials on SOS project, Exhibit C-71.

> that could tend to obscure, conceal, mislead, omit, deceive, distract or otherwise contrive to create substantial misunderstanding or criticism.[43]

2. Generalized Employment and Earnings Claims

Generalized employment and earnings claims are representations that allude to the present or future need or demand for (or potential earnings of) workers in an entire industry or profession. As with specific claims, generalized employment and earnings claims are widely used in this industry[44] and are widely understood by consumers to be references to the job and earnings potential of the school's own graduates.[45] Generalized claims appear in several different types of format, the most common of which are: references to the large numbers of persons presently employed in a field and/or their salaries; citations to the large numbers of persons who may be employed in the field in the near future and their expected earnings; and projections that a field is one which will experience rapid "growth," or one that will require retooling of existing modes of work.[46] In most instances this information is extracted from federal, state, local, or private manpower studies and projections and the most frequent source appears to be the U. S. Department of Labor's Occupational Outlook Handbook.[47]

Whichever format the claim takes, the point being made is the same--enrollment in this school will lead to job opportunities in the field.[48] In this regard, the actual meaning of the generalized claim is even more remote from consumer understanding of the claim than the comparable situation for the specific advertising claims described above. While the specific claim carves out a special portion of the school's own performance to pass on in advertising, the generalized claim refers to persons and job openings that are in no way affiliated with the school and often to job positions that do not even exist at the time the claim is made.

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[43] Statement of W. Goddard, Executive Director of the National Association of Trade and Technical Schools, in the Report of the Senate Committee on Veterans' Affairs to Accompany S. 2784, p. 88, Exhibit H-77.

[44] *See* Part I, Section IV(B)(2), *supra*.

[45] *See* Part I, Sections III(E), IV(B)(2), and V(C), *supra*.

[46] *See* Part I, Section IV(B)(2), *supra*.

[47] *See* Part I, Section IV(B)(2), *supra*. The Department of Labor *Occupational Outlook Handbook* is a massive compilation of information describing job requirements as well as projected demand in selected occupational fields. It also contains information on the educational and work experience prerequisites to obtaining jobs in each field.

[48] *See* Part I, Sections III(E) and (G), IV(B)(2) and V(C), *supra*.

A statement of generalized opportunity--*i.e.*, "computer programmers are in big demand"--directed to vocational school consumers has the tendency and capacity to be false and deceptive for a variety of reasons. First, the advertised claims create the impression that jobs will be made available to students who attend the school's courses. By juxtaposing the fact that the school offers courses in a vocational area with statements that jobs in the area are plentiful, the advertising creates the erroneous impression that attendance at the school will lead to the job in question.[49] In fact, the record shows that, for a variety of reasons, jobs are not uniformly or typically available to students who enroll in proprietary schools. On the contrary, very few students ever obtain the jobs for which the school purports to provide training.[50]

Second, advertised claims of general employment demand or potential salary expectations do not provide any indication that these generalized data are the product of a complex statistical process, and must be qualified to be correctly understood. The process encompasses a broad set of statistical and methodological assumptions in order to produce the final data. The most significant of these include such matters as the degree of statistical error tolerated by the organization making the projections; the age of the data utilized; the degree to which market forces will remain constant; inflation; and local variations in the labor market.[51] Every organization that produces this form of supply/ demand data provides introductory material explaining its statistical and methodological asssumptions and warning the reader that these assumptions are important in correctly interpreting the information provided.[52] These warnings are not to be found in proprietary school advertising.

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[49] The erroneous impression left on students by these advertisements has elicited comment from numerous people. In each case the students were induced to enroll in a school's course of study by virtue of its job-oriented ads. *See* testimony of S. Mindell, Office of the Attorney General, New York, Tr. 918; testimony of R. Amico, former student, Control Data Corp., Tr. 53; testimony of A. Burgas, former student, Tr. 1704; testimony of G. Brunson, former student, Control Data Corp., Tr. 4399; testimony of E. Allen, former student, Control Data Corp., Tr. 1010. *See also* excerpts from Transcript of Hearings on New York Computer Schools, and Federal Trade Commission Guides for Proprietary Vocational and Home Study Schools, Exhibit A-23.

[50] *See* Part I, Section VII(D) and (E), *supra*. Notice that *not* only are placement rates generally low in this industry but that students are often unable to obtain jobs because the school's training is inadequate, or the student who has been enrolled is ill-equipped to function in the field for which the school provides training.

Third, all official publications that attempt to predict trends will usually include some additional discussion of the prerequisites to employment in a given field.[53] Here we find requirements for higher educational degrees, minimum work experience, union membership, licensing and certification requirements, and employer preferences for operating their own in-house training programs.[54] Thus, for example, to be non-deceptive a generalized claim that "computer programmers are in big demand" should also state that in certain areas a minimum of two years' work experience is required, or college degrees are preferred, or employers often do their own training.[55] These types of employment prerequisites and conditions are not to be found in proprietary school advertising.

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[51] See Introduction to the Occupational Outlook Handbook in the comments of the U. S. Department of Labor, Exhibit K-623; and California Labor Supply and Demand, California Department of Labor, Exhibit C-198.

[52] In its preface to the Handbook, the U. S. Department of Labor is quite explicit in its warning that readers must exercise due care in interpreting the information provided:

> Information about future outlook in an occupation is very difficult to develop. No one can predict future labor market conditions with perfect accuracy...Methods used by economists to develop future occupational prospects differ and judgments which go into any assessment differ. Therefore, it is important for users of the Handbook to understand what underlies each statement on outlook. (Comments of Department of Labor, Attachment D, Exhibit K-623.)

Similar types of warnings are found in California Labor Supply and Demand, Exhibit C-198, and Labor Market Publications, State of California, Employment Development Department, Exhibit C-250.

[53] The very purpose of these publications is to provide information not only on expected growth patterns, but training and experience prerequisites to find employment in each field. See the Handbook and California Labor Supply and Demand, id. See also New Directions in Allied Health Manpower, HEW, USOE, Exhibit C-132; and Information on Supply and Demand Relationships for Specific Occupations in Principal Metro Areas of California, Employment Development Department, Exhibit C-134; Occupational
(Continued)

The record shows that these complexities pertaining to both the statistical reliability of long-term projections and an understanding of employment prerequisites lead to two conclusions that are relevant to the Commision's deliberations on the proposed Rule. First, manpower projection data must ultimately be interpreted by fairly sophisticated individuals who have an understanding of these complexities. While the data are intended to be read in the first instance by broad groups of people,[56] their proper use occurs in a counseling context where a trained occupation counselor is available to interpret the data. The experts and counselors who testified in this proceeding were unanimous in their belief that generalized data required thorough review and analysis by professionals for a proper interpretation.[57]

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53 (Continued)

Demand in Indiana, Employment Security Division, Exhibit C-214.

[54] Id.

[55] See, e.g., testimony of J. Wich, Assistant Professor of Marketing, University of Oregon, Tr. 4220-24.

[56] The Department of Labor encourages widespread dissemination of its Handbook and frequently provides distilled versions in pamphlet form to improve this dissemination. See, e.g., the pamphlets filed as Exhibit D-202. But the Department of Labor then encourages the reader to seek out expert advice before he acts. See attachments to Exhibit K-623.

[57] See testimony of D. Smith, American School Council Association, Tr. 4285; testimony of D. Laramore, Supervisor of Vocational Guidance, Montgomery County, Maryland, Tr. 2971; testimony of P. Hooper, Guidance Counselor, Tr. 5924; testimony of J. Wich, University of Oregon, College of Business Administration, Tr. 4222; testimony of W. Wilms, Center for Research and Development in Higher Education, University of California, Berkeley, Tr. 3224-5.

Indeed, the possibility of rapid employment fluctuations or even statistical error caused some experts to view general projections as highly suspect even when interpreted by professionals.[58]

Second, no matter how one feels about the accuracy of generalized data as such, generalized data are not and cannot be the basis for verifying or predicting whether the enrollees of any particular school will find jobs in the projected demand area. Those who prepare these projections[59] and others[60] stated that as useful as they may be in trying to grasp long-range trends in an entire career field, they were not pertinent in evaluating whether attendance at any particular school would result in a job.[61]

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[58] See, e.g., the testimony of B. Gilchrist, Director of Computing Activities, Columbia University and Chairman, Statistical Research Committee, American Federation of Information Processing Societies, Tr. 3000; testimony of W. Wilms, Center for Research and Development in Higher Education, University of California, Berkeley, Tr. 3225; The Productivity of Servicing Consumer Durable Products, Center for Policy Activities, Massachusetts Institute of Technology, Exhibit C-241; testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Tr. 9426-27; and testimony of D. Laramore, Supervisor of Vocational Guidance, Montgomery County, Maryland, Tr. 2970.

Mr. Laramore may have best stated the ambivalence many experts feel about using generalized data in their work. He found it useful "if there is no energy shortage, if there is no recession, if there is no inflation, and if this is what it looks like in ten years," Tr. 2971.

[59] See, e.g., the materials submitted by the Air Conditioning and Refrigeration Institute, Virginia, regarding the use of its projections in the advertising of National Radio Institute/McGraw Hill, materials from File No. 742-3161, Job and Opportunity Advertisers Unnamed, Exhibit C-210.

[60] See testimony of J. Wich, College of Business Administration, University of Oregon, Tr. 4215; comments of F. Kelley, Attorney General of Michigan, Exhibit K-433; comments of Department of Justice, Civil Division, State of Delaware, Exhibit K-593.

[61] Note that this is precisely the opposite of the way in which the advertised claims are interpreted by consumers. See Part I, Sections IV(B)(2) and III(G), supra; and text at notes 45-48 supra.

The U.S. Department of Labor--the primary source for proprietary schools' claims--objects to the unqualified use of generalized information in advertising copy. In its comments upon the Commission's proposed Rule, the Department of Labor strongly suggested that its data were presently being misapplied in proprietary school advertising and sales pitches:

> General statistics and other information cited in the Handbook is not designed nor intended to be used as a predictor of the capacity of a particular school to place its enrollees in specified job positions. One reason is that the information in the Handbook discusses the outlook for the Nation as a whole. Job prospects in various occupations vary by geographic locality. In using the national statements, young people should discuss with counselors the prospects in the particular localities in which they would like to live. Such information often is available from local offices of State employment security agencies.[62]

Proprietary school representatives often argue that in using the Department of Labor's generalized data they are making widely available to prospective students this important information about career opportunities and are doing so in a way that reaches more people than the Department of Labor itself can.[63] In this regard, they argue, they are acting as agents of the Department in fulfilling its information dissemination function.

But casting the argument in this fashion only serves to obscure and confuse the issue raised by paragraph (a) of the proposed Rule. The question is not whether the data should be made available to consumers in some abstract informational sense but whether advertising copy which promotes the courses of a particular school is the appropriate medium for conveying this information. In light of the available evidence that use of such data in schools' advertising falsely implies placement success, and in light of the Department of Labor's own comment that generalized data is not a predictor of success by particular schools, we find these industry arguments not compelling. The same data that may be useful in deciding on what career field to enter may be deceptive when applied by a particular school to convince the consumer to enroll in its course.[64]

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[62] Letter of January 15, 1975, from J. Kilberg, Solicitor of Labor, to C. Tobin, F.T.C., and attachments thereto, Exhibit K-623.

[63] See, e.g., comments of NATTS, Exhibit K-520; and comments of NHSC, Exhibit K-439.

Thus, the record demonstrates that advertising uses of generalized data have the capacity to be deceptive when directed to vocational school consumers, because as they are understood by the consumer: (1) they falsely imply that students attending the advertising school will obtain jobs; and (2) the ads fail to disclose, or forewarn the reader of, significant limitations as to the accuracy and utility of such data or of the need for additional educational or experiential prerequisites to employment that graduates of the school will not have. Generalized job and earnings advertising claims are, at best, half-truths with the capacity to mislead.[65]

3. The Proposed Remedy

The record demonstrates that both specific and general job and earnings claims have the capacity to be false, deceptive, and unfair. They violate Section 5 in a number of ways: (1) purposive misrepresentation or inaccurate extraction of the materials used as the basis for the claim; (2) selective recitation of the materials used as the basis for the claim; (3) failure to provide information that is required to appropriately interpret or analyze the claim; (4) false representations, both explicit and implicit, that jobs and earnings will be available to the school's own students; and (5) failure to substantiate advertised job and earnings claims.

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[64] The Department of Labor concurs in this assessment:

> Generalized statistics about national employment opportunities, therefore, can be used in a misleading fashion _if taken out of context_.

Comment of the Department of Labor, Exhibit K-623 (emphasis supplied.)

[65] Furthermore, the record indicates that use of generalized data as advertising claims may be unfair as well as deceptive. The analysis of the _Pfizer_ doctrine set out previously for specific job and earnings claims is apposite here--_i.e._, these generalized claims are (1) direct and unambiguous representations regarding, (2) job and earnings obtainable through the school's courses of study, (3) upon which consumers rely. This reliance is misplaced because the record shows that (4) the claims are not and cannot be substantiated even though (5) studies of placement success to substantiate these claims are feasible and relatively inexpensive.

Given the potential for deception in the use of such generalized and specific information, the Rule originally published by the Commission prohibited completely the use of any generalized claim and provided that the only type of permissible specific claim would be the school's *actual complete* track record.[66] While the difficulties with such advertised claims are many, the staff feels that less restrictive remedies are available to assist the Commission in avoiding the deception that is implicit in these job and earnings claims. Accordingly, we have revised the limitations on such claims in order to allow the greater dissemination of information on both the jobs and earnings success of the school's students and the job potential in the field in which the school provides training (while at the same time insuring that misrepresentation does not result). The revised provision we are proposing, instead of prohibiting the use of broadcast or written specific and general jobs and earnings claims, requires that they be *accompanied* by the school's placement and earnings statistics as defined by the disclosure section of the Rule,[67] as well as a statement that the advertised claims are not a predictor or guarantor of placement success.

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[66] Proposed 16 C.F.R. Part 438.2(a); 40 Fed. Reg. 21048, May 15, 1975.

[67] Paragraph (b) of the Rule pertains to disclosures of drop-out and placement rates. *See* Part II, Section IV(C), *infra*.

It must be emphasized that the Commission has ample authority to proscribe false, deceptive and unfair claims and representations. Previous cases have shown that the Commission may remedy advertising abuses when it has determined that the advertising has the capacity to deceive. Bankers Security Corp. v. F.T.C., 297 F.2d 403, 405 (3rd Cir. 1961); Resort Car Rental Systems v. F.T.C., 518 F.2d 962, 964 (9th Cir. 1974) (per curiam); Montgomery Ward & Co. v. F.T.C., 379 F.2d 666 (7th Cir. 1967); Feil v. F.T.C., 285 F.2d 879, 896 (9th Cir. 1960). In reaching that determination, the Commission does not need to have before it consumer testimony of actual deception. Double Eagle Lubricants, Inc. v. F.T.C., 360 F.2d 268, 270 (10th Cir. 1966); Zenith Radio Corp. v. F.T.C., 143 F.2d 29, 31 (7th Cir. 1944); Charles of the Ritz Dist. Corp. v. F.T.C., 143 F.2d 676, 679-80 (2d Cir. 1944). Nor must it find specific words to be deceptive if it has determined that the advertising viewed as a whole violates Section 5. F.T.C. v. Sterling Drug, Inc., 317 F. 2d 669, 674 (2d Cir. 1963); Aronberg v. F.T.C., 132 F.2d 165, 167 (7th Cir. 1943). Even if a statement may be construed in a literally true fashion, its potential for deceptive interpretation is sufficient to warrant remedial relief. Murray Space Shoe Corp. v. F.T.C., 304 F.2d 270, 272 (2d Cir. 1962); Ward Laboratories, Inc. v. F.T.C., 276 F.2d 952, 954 (2d Cir. 1960) cert. denied, 1348 U.S. 826 (1960).

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The record supports the fact that some form of corrective remedy is required to cure the deceptions inherent in both specific and generalized advertising claims. Numerous alternatives for dealing with both types of claims were suggested by commentators--ranging from adoption of the Rule as originally proposed[68] to complete abandonment of any attempt to cure these deceptions.[69] However, even industry representatives agreed that some form of substantiation and disclosure requirement was necessary to prevent false and deceptive specific[70] and generalized[71] advertising claims.

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[67] (Continued)

Despite this broad authority, we are recommending that the Commission place certain limitations on the free use of general and specific claims rather than prohibiting them outright. It is our view that the Supreme Court's decision in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 44 U.S.L.W. 4686 (U.S. May 24, 1976), cautions the Commission to adopt the least restrictive alternative that is consonant with its Section 5 mandate. Although the Court made it clear that it was not sanctioning or condoning false and deceptive advertising (Virginia State Board of Pharmacy v. Virginia Citizens Consumers Council, supra, note 24 of the opinion), we feel that the Commission should first adopt an approach that places limitations and qualifications on certain advertising before utilizing a more severe remedy. We find a less restrictive remedy to be particularly appropriate in this industry-wide rulemaking context.

[68] See, e.g., the testimony of S. Mindell, New York Attorney General's Office, Tr. 916; testimony of E. Gold, Kings County New York District Attorney, Tr. 1325; and testimony of L. Glick, Assistant Attorney General, State of Michigan, Tr. 3022.

[69] See, e.g., comments of NHSC, Exhibit K-439; comments of the Association of Independent Colleges and Schools, Exhibit K-867; comments of the Colorado Private School Association, Exhibit K-589.

[70] See, e.g., comments of Bell & Howell Schools, Exhibit K-856; comments of Control Data Corporation, Exhibit K-207; comments of Lacaze Academy, Exhibit K-725; and testimony of P. Carnell, President of Albany Business College, Tr. 6831-33.

[71] See, e.g., testimony of P. Carnell, President of Albany Business College, Tr. 6832; testimony of L. Kogan, Private Vocational Schools Association of New York, Tr. 972; comment (Continued)

We believe that the disclosure of a school's actual track record is the best mechanism for curing the deception that is inherent in the use of job and earnings claims, and that this disclosure should appear in the advertising and promotional literature itself. Without additional information, both specific and general claims erroneously imply that prospective enrollees can rely on the claim as a fair assessment of the school's ability to place students in jobs. In fact, the most reliable index of the course's actual capacity to lead to employment is an accurate description of the placement and earnings success of recently enrolled students.[72] While the staff has altered its position to allow specific and general claims to be made, we feel that such claims should only be tolerated if some form of corrective and interpretive data is made available to consumers to assist them in evaluating the claims.[73]

By recommending the lifting of the restrictions imposed by the originally published Rule, we do not intend to imply that the use of specific and generalized claims has less of a tendency to deceive than the Commission may have thought when it published the proposed Rule. On the contrary, the record shows that these claims are a serious source of deception. However, the staff believes that less restrictive means are available to cope with the problems raised by these advertisements. Each school must be able to substantiate its claims and each school is free to decide whether or not it will engage in this form of job and earnings advertising.

Paragraph (b) of the Rule requires schools that make job and earnings claims to affirmativly disclose the employment and salary records of their own students. The rationale and basis for this type of disclosure provision is discussed at length in a later section,[74] but suffice it to say here that staff finds it to be unfair or deceptive to make job claims and to fail to affirmativly disclose placement information.

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[71] (Continued)

of Bell & Howell Schools, Exhibit K-856; testimony of G. Seltzer, Professor of Economics and Industry Relations, University of Minnesota, Tr. 8856; testimony of K. Bunkle, Director, Bay Valley Technical Institute, Tr. 4757; initial comments of the AICS, Exhibit K-867.

[72] See Part I, Section VII(B), (C) and (D), supra and Part II, Section IV(C), infra.

[73] See Part I, Sections III(E), IV(B)(1) and (2), V(C) and VII(B), supra.

[74] See Part II, Section IV(C), infra for a discussion of the disclosure provisions of the Rule.

Because of this Rule provision, all schools that make job claims must have substantiating data in the form of placement rate and salary statistics. If schools do not keep track of what happens to their own students, they have no basis for making claims, whether specific or general, that imply to the intended audience that enrollment will lead to employment. Such unsubstantiated advertising is unfair and deceptive, and is thus proscribed by the Rule.

The Rule permits job representations if the school has substantiation in the form of placement statistics. Since the school already possesses such statistics in order to comply with paragraph (b) of the Rule, disclosing them in conjunction with an advertising claim should not be a significant burden to the advertiser.

On the other hand, such disclosure is an effective way to prevent consumers from being deceived by unfair or deceptive job claims. As previously described, consumers take such advertisements--whether general or specific--to be assurances that they will almost certainly get a job if they enroll. Understood as such, except in the rare case where a school's placement rate approaches 100 percent of enrollees, the claim is false. The only way to cure this misrepresentation is to show the consumer exactly what the claim is based on: the actual percentage of recent enrollees and graduates who are employed in related jobs.

The revised Rule provision provides schools with wide latitude to advertise to students all kinds of information about job opportunities in a career field, and job success of a school's own graduates. The Rule only states that such ads must be accompanied by track record disclosure to cure the tendency the other information has to mislead consumers about their actual job chances.

The major objection to this amended Rule provision, since schools must already keep the information to be disclosed, will be that inclusion of the job and earnings data in advertising is onerous and perhaps impossible. Our response is that such representations without the accompanying disclosures invariably are false or have the capacity to deceive a significant number of vocational school consumers. If the advertisements cannot be run with the disclosures, they should not be run at all. That a form of advertising cannot be done non-deceptively does not give it protection from Commission action.

This Rule provision finds support from the Federal Interagency Committee on Education which recommended a year ago that schools participating in federal programs be required to disclose drop-out rates "and in the event the school publicly advertises job claims, it makes disclosure of job placement rates, and all other material information concerning the school and its program."[75] The Committee also recommended that manpower publications carry a bold disclaimer that: "estimates are general and do not necessarily apply to graduates of any particular school; the only reliable information is that school's placement rate."[76] We also note that the U. S. Department of Labor felt that the interests of the Rule as well as the interest in wider dissemenation of information would be best served if "schools be permitted to make written or broadcasted claims if such claims were substantiated by the school's actual knowledge of its students' experience".[77]

Other types of disclosures have been recommended. One school suggested that all claims merely carry a logo that schools cannot guarantee placement,[78] another that they be accompanied by a sentence indicating that employment success depended on each graduate's qualifications.[79] One proprietary school trade association offered a disclaimer that "Estimates made are general and do not necessarily apply to graduates of any particular school."[80] The difficulty with these suggestions is that they attempt to correct the deception problem by indirection--i.e., by implying that the claim may not be accurate for a variety of reasons. We see no reason to adopt so subtle an approach when the school already possesses its actual track record that can provide an objective and direct indication of the accuracy of the claim.[81]

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[75] Toward a Federal Strategy for Protection of the Consumer of Education, Federal Interagency Committee on Education (July 1975), p. 53, Exhibit A-95.

[76] Id. at p. 51.

[77] Comments of the U. S. Department of Labor, Exhibit K-623. See also testimony of L. Kogan, Private Vocational School Association of New York, Tr. 972; testimony of J. Lack, Commissioner of Consumer Affairs, Suffolk County, L. I., Tr. 1006.

[78] Comments of Bell & Howell Schools, Exhibit K-856.

[79] Testimony of P. Carnell, President, Albany Business College, Tr. 6832.

[80] Initial comments of AICS, Exhibit K-867.

[81] In this testimony at the hearings, the Deputy Attorney General of California, H. Elkins, suggested that the Commission should require the disclosure of both general job and earnings projections and the specific track record of the school, Tr. 5166.

While students will eventually see the placement disclosures on the Affirmation Form, this will not be sufficient to cure advertising misrepresentations. The record shows that advertising copy is the mechanism most frequently employed by schools to attract initial enrollees or to obtain leads for future sales presentations.[82] Because of this pervasive use of the media, it is essential that the advertisement itself contain a sufficient amount of accurate information to allow the reader to properly judge the validity of each claim being made. It is important that the student be able to evaluate the accuracy of the school's job and earnings claims prior to the student getting deeply involved in the sales process. This is particularly true in the vocational school context because the evidence indicates that many students are enrolled in courses for which they have little interest, aptitude or qualifications,[83] and that enrollment was often induced by unfair and deceptive sales tactics and techniques.[84] Thus, if the Commission is going to stop short of an absolute ban on these job claims that have a significant capacity to deceive, it must allow contemporaneous correction of any misrepresentations implict in the advertising.

Furthermore, the inclusion of the disclosures required by the Rule in the advertising copy itself offers significant potential for lowering the substantial search costs associated with selecting vocational training courses. By conveying track record information in the advertisements themselves, the reader can compare and evaluate the performance of schools offering similar courses of study and thereby eliminate from consideration those courses that do not meet his or her needs. Given the widely differing placement rates from school to school and course to course in this industry,[85] this form of comparison is important. The prospective enrollee can, thereupon, request additional information and make whatever additional inquiries he deems necessary about those schools he still has under active consideration. Moreover, poor product choices may be avoided if the consumer is warned that the claim being made is not a guarantee or prognostication of employment and that the school's actual track record is available for review. Since trial-and-error selection is not feasible for this product purchase, such contemporaneous disclosures can assist the consumer in shopping for the best available school before making a commitment to a costly and long term purchase with the school.[86]

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[82] _See_ Part I, Sections IV(B) and V(C), _supra_.

[83] _See_, Part I, Sections VII(E), III(C) and (D), and VI(A), _supra_.

[84] _See_ Part I, Section V(C), _supra_.

[85] _See_ Part I, Section VII(D), _supra_.

In addition, a requirement that all specific and general claims be accompanied by the disclosures required in paragraph (a) provides assistance in preventing false and deceptive advertising and sales practices. If a school is required to inform prospective enrollees at the time it makes its specific and general job and earnings claims that such claims are not necessarily predictive of placement success and that the school's actual track record is a better information source, the school has less incentive to engage in advertising that relies on false claims. The advantages associated with such false claims are correspondingly diminished when the school's actual performance must simultaneously be made available.

Therefore, we are recommending that the Commission not prohibit certain types of claims altogether, but that instead the Commission permit such claims if appropriately qualified. It is our view that the record shows the need for greater dissemination of information to prospective students[87] rather than less, provided that the information can be made accurate and useful to the consumer.

This view has resulted in one further change in the Rule as originally published. Since the original rule prohibited generalized claims altogether and allowed only track record disclosures, it placed new schools and courses in the position of not being permitted to engage in any form of job and earnings claims at all.[88] While this approach is consistent with the principle that the only meaningful jobs and earnings information is the school's own record, the application of the principle to new schools and courses might have the harsh effect of preventing or chilling such schools or courses from breaking into new market areas because of the limited nature of the advertising claims available to them. Indeed, the complete prohibition on jobs and earnings claims for new schools and courses might prove to be a deterrent to course innovation by either new market entrants or established schools.

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[86] There are serious and substantial costs to both consumers and competitors when a consumer is erroneously enrolled in an expensive course. A complete discussion of the costs appears in Part II, Section V, _infra_.

[87] _See_ Part I, Sections VII(B), (C), and (F), and III(G), _supra_. The record shows a consensus that students are in need of more, rather than less, accurate information. _See_ Part I, Section IV(C)(2), _infra_.

[88] Since the school or course was new, it could not have any track record to advertise, and so it could not advertise anything about jobs and earnings.

Accordingly, we are recommending that new schools and courses be allowed to make generalized claims[89] as long as they are accompanied by a disclosure which indicates that the school has no track record data available, that generalized statistics are problematic in certain ways, and which advises the reader to seek additional information from knowledgeable counselors. It is our view that such a disclosure will assist consumers by giving some perspective to the generalized claims being made.

Staff recommends this exception somewhat reluctantly because this disclosure may not be sufficient to prevent some consumers from being misled by the general job claims. But the alternative of banning all job advertising for new courses seemed less desirable considering the negative implications for competition, innovation, and flexible response to changing labor conditions.

Nevertheless, as with claims made by established schools and courses, we feel that the disclosure should be made contemporaneously with the claim itself. Given the serious deception problem inherent in such claims, it would be difficult to rationalize the use of these claims without some form of qualifying statement. The purpose of the new school exception is to lower the barriers the Rule might impose on new entrants into the proprietary school market, not to provide a license for new schools and courses to engage in widespread deception and misrepresentation.[90]

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[89] Specific claims would still not be available. Since the school or course is new, it is impossible for it to have anything specific to say about jobs and earnings--even anecdotal in nature. Once the school or course begins to develop a track record, it can use specific advertising claims as any other established school would. See definition (L) and paragraph (b) of the recommended Rule, Part II, Sections II and III, supra.

[90] It should be emphasized that an unrestricted exception for new schools and courses would pose serious enforcement difficulties for the Commission. Since such an exception would permit schools and courses characterized as "new" to engage freely in the type of advertising the record demonstrates to be so widely used and abused, the incentives (Continued)

C. Disclosure of Graduation and Placement Information

The recommended Rule requires that all schools include in their Disclosure Forms information on the number and percentage of students who graduate, drop out or have not yet completed their course of study. It also prescribes that schools which make job or earnings claims must include in their Disclosure Forms placement and earnings disclosures regarding the performance of the school's own enrollees. Those schools which do not make such claims must instead include a disclosure that explains that the school is not making job or earnings claims. We will analyze the basis for requiring the disclosure of graduation information separately from the discussion of placement and earnings disclosures. We note at this point that the provisions we recommend here closely track the original proposed Rule's requirement of drop-out, graduation, placement, and salary disclosures.

1. Graduation and Drop-out Disclosures

The Rule requires in subparagraph (b)(1) that all sellers include in their Disclosure Forms recent graduation and drop-out rates for the courses being offered. This requirement is based on the fact that the failure to provide such disclosures is unfair or deceptive. In addition, such disclosure is needed to prevent other unfair or deceptive practices.

Even if schools make no direct misrepresentations or indirectly leave a deceptive impression about their courses' graduation rates, their very silence conceals facts that are material to the student's choice. Vocational school consumers assume that enrollment will lead to graduation. Indeed, since much of the typical vocational school transaction concerns what employment possibilities are open to graduates,[91] the concept of failure to complete rarely enters the picture. Yet, as this Report shows, drop-out rates at many schools can be quite high and the typical student does not often complete his full course of study.[92] Nevertheless, schools do

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[90] (Continued)

for existing schools and courses to recharacterize themselves as "new" in order to gain the benefits of the exception would be substantial. The Commission would thereupon be compelled to inquire into the accuracy of the characterization. We feel that the incentives are reduced when new schools are required to make the disclosures recommended in this provision.

[91] *See* Part I, Sections IV-B and V-C, *supra*.

[92] *See* Part I, Sections VI-A(1) and (2), *supra*.

not disclose their drop-out rates to prospective enrollees.[93] This failure to disclose material information is an unfair and deceptive practice.[94]

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[93] See Part I, Sections IV-C, VI-A(4), and III-G, supra.

[94] It is well established by case law that actionable deception under Section 5 of the Federal Trade Commission Act can arise from the silence of the advertiser as well as from affirmative representations. See, e.g., Fisher & DeRitis, 49 F.T.C. 77 (1952); Stupell Enterprises, Inc. 67 F.T.C. 173 (1965); Bantam Books, Inc. v. F.T.C., 275 F.2d 680 (2nd Cir. 1960), cert. denied, 364 U.S. 819 (1960); Kerrm v. F.T.C. 265 F.2d 246 (10th Cir. 1959) cert. denied, Double Eagle Refining Co. v. F.T.C., 361 U.S. 818 (1959). The school need not have taken any affirmative action to create consumer misbeliefs: a violation of law is established if the advertiser or salesman is silent about a material fact concerning which consumers may make erroneous assumptions.

Silence that unfairly harms the economic interests of consumers has with some frequency been the subject of other Federal Trade Commission Rules: The Failure to Post Minimum Octane Numbers on Gasoline Dispensing Pumps Constitutes an Unfair Trade Practice and an Unfair Method of Competition, 36 Fed. Reg. 23871 (1971); effective date stayed and plaintiff's motion for summary judgment granted in suit questioning F.T.C. authority to promulgate TRR's, National Petroleum Refiners Association v. F.T.C. 340 F. Supp. 1343 (DDC 1972); reversed and remanded, 482 F.2d 672 (D.C. Cir. 1973), cert. denied, 415 U.S. 951 (1974). Trade Regulation Rule, Care Labeling of Textile Wearing Apparel, 36 Fed. Reg. 2388 (1972); Trade Regulation Rule Relating to Incandescent Lamps, 35 Fed. Reg. 11784 (1971); Trade Regulation Rule, Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking, 29 Fed. Reg. 8324 (1964).

These rules were adopted to prevent unfairness due to the absence of information about the nature of the product. The Octane Rule, for example, found that consumers needed essential product information. In this instance, consumers faced a great variety of grades and brands of gasoline, and, absent octane disclosures, they could neither relate gasoline varieties to their automobile requirements so as to avoid engine damage, nor price-shop for gasoline.

Lacking octane information, consumers often purchased gasoline of higher expense and octane quality than their automobile required. Again, the Commission found that under the circumstances, failure to disclose octane values was an unfair trade practice and so ordered their disclosure. See also Manco Watch Strap Co., Inc., 60 F.T.C. 495 (1962); and

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The disclosure of this drop-out information has been considered critical to a consumer's purchase decision by the General Accounting Office,[95] the United States Office of Education,[96] the Federal Interagency Committee on Education,[97] a national conference sponsored by the Education Commission of the States,[98] a congressional report,[99] and a Brookings Institute report.[100] In addition, a broad spectrum of students, consumer groups,

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[94] (Continued)

Mohawk Refining Corp., 54 F.T.C. 1071, 1077 (1958): "The appeal also contends that no power is conferred under the Act to require revealing statements in cases of non-disclosure unless the challenged practice also is accompanied by false statements or affirmative misrepresentation pertaining to the articles offered. This legal concept is erroneous. The Commission has plenary power to require affirmative disclosure of material facts in situations where seller silence results in deception of purchasers." *Aff'd*, Mowhawk Refining Corp. v. F.T.C., 263 F.2d 818, 820 (3d Cir. 1959), *cert*. *denied*, 361 U.S. 814 (1959).

[95] *See* *GAO Report, Most Veterans Not Completing Correspondence Courses*, p. 15, Exhibit H-10.

[96] *See* letter from P. Muirhead, Acting Commissioner of Education to Senator E. Brooke (May 8, 1974), Exhibit H-84; "Federal, State and Private Programs of Low-Interest Loans to Students in Institutions of Higher Learning," 40 Fed. Reg. 7586, February 20, 1975, *amending* 45 C.F.R. Part 177.66, Exhibit H-160. The regulations reflect USOE's view that drop-out rates can be and often are often indicators of the performance of participating schools.

[97] *See* *A Federal Strategy Report for Protection of the Consumer of Education*, FICE, Subcommittee on Consumer Protection, *September 18*, 1974, p. 52, Exhibit H-95.

[98] *See* Consumer Protection in Postsecondary Education, Second National Conference Report No. 64, CS, (November 1974), Exhibit A-106.

[99] *See* Reducing Abuses in Proprietary Vocational Education, pp. 22-23, 44-45, Exhibit H-168.

[100] *See* Orlans, *Private Accreditation & Public Eligibility*, Brookings Institute (1974), Exhibit D-21. *See also* testimony of the authors of the Brookings Institute's Report on Private Accreditation and Institutional Eligibility before the Special Studies Subcommitee of the House Committee on Government Operations: H. Orlans, "The Protection of Students at Proprietary Vocational Schools", document #4, Exhibit H-90, and G. Arnstein, document #5, Exhibit H-90.

state agencies, educators, counselors, labor market and educational experts, and even school owners have argued that drop-out disclosures are highly material to a consumer's purchase decision.[101]

The materiality of this information rests on several factors. A drop-out or graduation rate will tell a consumer what the chances are of typical enrollees completing the course of study. For this purpose it is irrelevant whether students drop out for personal reasons, dissatisfaction with the school, or for any other cause since the consumer considering enrolling in a course can surely not predict which of many reasons may cause him to drop out. What is important is that the prospective enrollee be advised of the overall, cumulative drop-out statistics. Consumers are considering investing a large amount of time, effort, and financial resources in the course. They may rest their career hopes on completing the program. Before they do all of this, they will want to know whether it is likely they will even finish the course. The importance of this information is accentuated by the often startling reality of a school's actual drop-out rate. While many students may think or be told that almost everyone graduates,[102] some schools graduate only 10 percent or 20 percent of those who enter.[103] In general, graduation rates are low and for some courses they are almost neglible.[104]

Another use of drop-out information is to allow a prospective student to compare similar, but competing, courses. If there are two almost identical courses, one with a drop-out rate of 80 percent and the other with a rate of 20 percent, any rational consumer would clearly consider this information material to the purchase decision. Drop-out rates have been found to vary widely from school to school and course to course.[105] While the differences in these rates may be explained by many factors relating to the school and its courses, the disclosure of the rate itself at least notifies the consumer that further inquiry to obtain an explanation is warranted.[106]

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[101] See Part I, Section VI-A(4), supra and sources cited therein.

[102] See Part I, Section IV-C, supra.

[103] See Part I, Section VI-A(1), supra.

[104] See, Part I, Sections VI-A(1) and (2), supra.

[105] See, Part I, Section VI-A(1), supra.

In addition, while we do not believe that there is any absolute correlation between drop-out rates and the quality of a course or its enrollment techniques, in some cases a course's drop-out rate can be an indicator of course quality, and whether consumers are being enrolled in a course commensurate with their previous training and education. The record demonstrates that high drop-out rates are in fact linked to schools who indiscriminately sell technical courses. Extraordinarily high drop-out rates may mean that course quality is not up to expectations or is too demanding for most enrollees.[107] Similarly, unusually widespread misrepresentations in the enrollment process can account for high drop-out rates.[108] The unusually high drop-out rates in the very early stages of many courses imply that many students have in fact been improperly enrolled.[109]

Drop-out rates also serve an important function when juxtaposed to placement rates. If a school makes no job or earnings claims, then the only way a consumer will know anything about the chance that the course will lead to a job is from the course's drop-out rate. This will at least indicate a consumer's chances of graduating. The consumer will then have to explore independently the chances of getting the desired job upon graduation. While mandatory placement disclosures may be preferable, staff has determined, for reasons to be discussed below, that the Rule should only require them if the school makes job or earnings claims.[110] If a school does not, it only has to disclose its graduation and drop-out rates.

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[106] Initial Comments of the Association of Independent Colleges and Schools, p. 61, Exhibit K-867; Brief on behalf of National Association of Trade and Technical Schools, p. 70, Exhibit K-520, comments of the National Home Study Council, Exhibit K-439; testimony of J. Clark, Commissioner, Indiana Private School Accrediting Commission, Tr. 6403; testimony of M. Raskin, President, IBA Prestige Beauty Coleges, Tr. 6624; testimony of F. Albanese, Executive Secretary, Ohio State Board of School and College Registration, Tr. 6672; testimony of S. Ritman, Medical Director, Gradwohl School of Laboratory Technique, Inc., Tr. 6806; testimony of H. Rabin, President, Illinois Association of Trade and Technical Schools, Tr. 7505; testimony of L. Broesder, Senior Vice President, Spartan School of Aeronautics, Tr. 7527; testimony of T. Scully, President, Indiana Association of Private Schools, Tr. 8338; testimony of H. Herzing, President, Wisconsin Council for Independent Education, Tr. 8448; testimony of G. Allen, President, Cleveland Institute of Electronics, Tr. 8710; testimony of R. Knutson, President, Education Management Corporation, Tr. 8884; testimony of B. Ehrlich, Counsel to NHSC, NATTS, and CAC, Tr. 9320.

[107] See Part I, Section VI-A(3), supra.

[108] See Part I, Section VI-A(3), supra.

[109] See Part I, Section VI-A(2), supra.

If a school does make job or earnings claims, then graduation information is essential to fully understand the required placement disclosures. This will also be discussed more fully below.

The need for such affirmative disclosure of drop-out information is particularly acute in the vocational school transaction. While an undisturbed free market might be the cheapest and most effective way to correct deceptions involved in the sale of inexpensive items or where demand for the items is elastic, the market is not likely to correct itself in the case of the sale of vocational courses. The very nature of most vocational school sales involves a solitary transaction which is not likely to be repeated. Rarely will a student attend one course, and then enroll in another from the same school. Nor is it likely for the consumer to take a variety of vocational training courses from several different schools. This being the case, there is no incentive for schools to try to establish "regular customers" or to try to convince consumers to change from school to school.

Moreover, sales methods are designed to prevent consumers from talking over their purchase decision with others to find out a school's reputation.[111] Instead, the salesperson tries to enroll the individual on the spot, and sometimes even discourages the student from obtaining additional information.[112] In addition, the stakes involved in the purchase decision are great. Not only are tuitions sizeable,[113] but the students often have little or no income with which to pay them.[114] Moreover, the time consumed and the psychological harms suffered should not be ignored.[115] The situation is further aggravated by the lack of sophistication and the vulnerability of the typical vocational school consumer.[116]

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[110] Note that while a school may not make a job or earnings claim, its course will still be vocational in content--otherwise the course would not be covered by the Rule--and students still have vocational objectives. *See* Part I, Section III-E, *supra*.

[111] *See* Part I, Section V, *supra*.

[112] *See* Part I, Section V, *supra*.

[113] *See* Part I, Section II, *supra*.

[114] *See* Part I, Section II-D, *supra*.

In essence, the consumer is confronted with a decision from which there is no recourse. Trial and error is not a feasible alternative method of obtaining information about such product choices. Since the adverse consequences of an erroneous choice are substantial, it is essential that consumers be given a minimum amount of information that will not only reduce their search costs, but minimize the risks of a wrong product selection.

Thus, while it is essential that these vulnerable consumers receive highly material drop-out information before making the unique vocational school purchase decision, without the Rule's mandated disclosures, prospective students will receive little if any information concerning courses' drop-out rates. Schools do not make such disclosures,[117] and in fact some schools strongly oppose any such disclosure.[118] Salespeople often avoid the subject. If a consumer presses the issue, the salesperson may evade the question or give misleading answers.[119]

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[115] _See_ Part II, Section V, _infra_.

[116] _See_ Part I, Section III-H, _supra_.

[117] _See_ Part I, Section VI-A(4), _supra_.

[118] For example, the counsel for NATTS, NHSC, and CAC stated that he was opposed to drop-out disclosures, that in fact he would not find a 20-percent graduation rate by a school a material fact that would affect a consumer's purchase decision. Testimony of Bernard Ehrlich, Tr. 9272. _See also_ letter from Mary Mann (October 9, 1974), Exhibit K-67; comments of NATTS, Exhibit K-520; comments of NHSC, Exhibit K-439; testimony of William A. Fowler, Executive Director, National Home Study Council, Tr. 9049; testimony of Dr. Robert Allen, Chairman, NATTS Accrediting Commission, Tr. 9139; testimony of William Goddard, Executive Director, National Association of Trade & Technical Schools, Tr. 9166; and testimony of Richard A. Fulton, Executive Director and General Counsel, Association of Independent Colleges and Schools, Tr. 6690.

[119] _See_ Part I, Sections IV-C and V-C(2), _supra_.

If students do not get the answers from the school, however, they are not likely to get them from others. Guidance counselors often know as little as their counselees about proprietary school drop-out rates.[120] Accrediting associations oppose disclosure of drop-out rates.[121] State agencies do not disseminate such information even if they collect it.[122]

Not only are drop-out and graduation rate data material, but disclosure of such data is important to prevent unfair or deceptive practices. In the first instance the disclosures will cure oral or written misrepresentations concerning the drop-out and graduation rates themselves.[123] As we have indicated, proprietary schools engage in a number of practices which result in the consumer's belief that the typical enrollee will have little difficulty in completing the full course of study, and thereby receive the training necessary to obtain marketable skills. Even where schools do not explicitly misrepresent their drop-out statistics, they leave the impression that there are fewer drop-outs than there actually are.[124]

Drop-out rate disclosure will also prevent other unfair and deceptive practices. As discussed above, salespeople randomly enroll many students who are not qualified or have no real interest in the offered course.[125] In addition, misrepresentations as to the nature or utility of the course induce others to enroll.[126] Both of these practices result in high drop-out rates,[127] often quite early in the course.[128] By requiring schools to widely disclose their drop-out rates, schools whose high drop-out rates are caused by false, deceptive and unfair practices will be encouraged to alter those practices that cause the high drop-out rates in order to remain competitive with schools with lower drop-out rates. Schools will be encouraged to use fewer misrepresentations in enrollment and to screen students more carefully to prevent unqualified enrollees.[129] Oral misrepresentations and sales techniques are so extensive and imaginative that any specific prohibition of such unfair or deceptive acts would be ineffective or overly burdensome. Drop-out disclosures should achieve similar results but burden schools less and ease enforcement responsibilities. The result should be lower drop-out rates and thus less frequent waste of school and student resources. Consumer search costs should diminish because actual enrollment would no longer be the sole method by which a consumer can judge his ability to remain in the course.

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[120] See Part I, Section VI-A(4), supra.

[121] Comments of NATTS, Exhibit K-520; supplemental comments of AICS, Exhibit K-867; comments of NHSC, Exhibit K-439.

[122] See, Part I, Section VIII-B(1), supra.

[123] See discussion of such misrepresentations at Part I, Section IV-C, supra.

[124] See discussion of such tactics as Part I, Section IV-C, supra.

[125] See Part I, Section V, supra.

[126] See Part I, Section IV, supra.

[127] See Part I, Section VI-A(1), supra.

[128] See Part I, Section VI-A(2), supra.

While members of the industry argued that drop-out information is not material to a consumer's purchase decision, the main argument against drop-out disclosures was that their display on the Disclosure Form in itself would be misleading. School owners said they wanted to compare their drop-out rates with other schools, particularly public institutions.[130] But the Rule never did and does not now prevent either the explanation or comparison of drop-out rates. Nothing in the Rule prevents representations--whether in advertising, sales presentations, brochures, mailings, or any other medium--concerning drop-out rates.

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[129] See testimony of W. Butler, salesman for Cleveland Institute of Electronics, Tr. 4899-4900.

[130] See comments of NHSC, pp. 87 and 92, Exhibit K-439; comments of NATTS, p. 72, Exhibit K-520; supplemental comments of AICS, p. 60, Exhibit K-867; comments of Manpower Business Training Institute, p. 3, Exhibit K-270; comments of LaSalle Extension University, p. 31, Exhibit K-237; testimony of Joseph A. Clark, Commissioner of the Indiana Private School Accrediting Commission, Tr. 6375; testimony of Erik Brinson, representing the Missouri Schools for Doctors' Assistants and Technicians, Tr. 6715; testimony of Frank N. Albanese, Executive Secretary of the State Board of School and College Registration, Tr. 6672; testimony of Leroy Broesder, Senior Vice President, Administration, Spartan School of Aeronautics, Tr. 7529; testimony of J. Michael Bartels, National Director of Manpower Business Training Institute, Tr. 7672; testimony of Charles V. Chase, Assistant to the Chief Executive, Advance Schools, Inc., Tr. 8821; testimony of Robert Knutson, president of Education Management Corporation, Tr. 8875; testimony of Philip Chosky, President, Electronic Institutes, Tr. 5272; testimony of C.B. Brown, Director, National Association of Cosmetology Schools, Tr. 5303; testimony of George Milhoan, Director of Arizona Automotive Institute, Tr. 5383.

The Rule's only restriction of free discussion concerning drop-out rates is necessary to insure that consumers get a meaningful chance to understand the mandated disclosures. The Disclosure Form must be mailed alone with no other materials enclosed in the envelope. Moreover, the school cannot attempt to resell the consumer by sending the sales representative back into the consumer's home and discussing drop-out rates. These restrictions are needed to insure that schools or their sales representatives do not garble or nullify the impact of the disclosures.[131]

It is important to understand what these restrictions do not do. They do not prevent the school from showing students the Disclosure Form before they sign the enrollment contract and explaining at that time the reasons for drop-outs or comparing the school's own rate with those of other schools. Nor do they prevent the school from mailing to students anything it wants to about drop-outs before or after the contract is signed. The Rule does not even prevent discussions about drop-outs at the school before the student affirms. Thus schools have every reasonable opportunity to explain and analyze their drop-out rates.

Some schools argued that drop-out disclosures without a listing of reasons for dropping out was inappropriate, and suggested that the Rule should require disclosure of the reasons students fail to complete.[132] We reject this proposal for several practical reasons. A breakdown of the reasons students withdraw would be difficult to design, burdensome on schools, and virtually unenforceable. Of those who have made this recommendation, each has offered a list of "acceptable" drop-out reasons.[133] It is the staff's view that it would be difficult if not impossible to delineate all possible drop-out reasons on this type of disclosure form, even if there were a consensus on which grouping was the most "acceptable." The Rule instead allows schools to explain their rates as they think best on a school-by-school basis. This allows students to judge which reasons seem most pertinent to their own situations.

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[131] See Part I, Section V-C, supra.

[132] See, supplemental comments of AICS, p. 61, Exhibit K-867, and NHSC, p. 82, Exhibit K-439; comments of the National Association of State Administrators and Supervisors of Private Schools, Proprietary School Service, p. 3, Exhibit K-784; comments of M-W Corp., p. 14, Exhibit K-863; comments of Bell & Howell, p. 44, Exhibit K-856; comments of Manpower Business Training Institute, p. 3, Exhibit K-270; testimony of Charles V. Chase, Assistant to the Chief Executive, representing Advance Schools, Inc., Tr. 8824; testimony of Stephen Mindell, Deputy Head of Consumer Frauds and Protection Bureau, Tr. 932; testimony of Mrs. Nancy Sedlak, owner, United Health Careers Institute, Tr. 5174; testimony of John F. Lynch, employee, Control Data Corporation, Tr. 7395; testimony of J. Michael Bartels, National Director of Manpower Business Training Institute, Tr. 7672; testimony of A.J. Harris, Executive Vice President, Miami Jacobs Junior College, Tr. 8419; testimony of Henry G. Herzing, President, Wisconsin Council for Independent Education, Tr. 8439; testimony of Marguerite Burns, Executive Secretary, Rhode Island Higher Education Assistance Corporation, Tr. 816; testimony of Gerald O. Allen, President, Cleveland Institute of Electronics, Tr. 8710.

Moreover, a breakdown of drop-outs by reason for dropping out would present the Commission with thorny compliance questions. How often would schools correctly tabulate the data by category, particularly if among the categories were drop-out reasons like "misled by school salesperson," or "course not as represented?" How would the Commission determine the accuracy of the tabulations? This raises a related issue. If the Rule required a categorization of reasons, this would force schools into difficult and expensive data collection. Instead of merely counting the total number of drop-outs, the school would be required to analyze and tabluate the drop-out "reasons." This would entail detailed follow-up efforts to uncover students' intentions.

Some industry representatives argued that disclosure of drop-out rates would encourage schools to make their courses so easy that no one would drop out--so easy as to be devoid of educational value.[134] This argument fails for a variety of reasons. If a course is inadequate to meet its stated objective, this will show up in a low placement rate for the course--a fact that must now be disclosed to prospective enrollees. Students are also likely to drop out if a course is too easy, just as they are if it is too difficult. Moreover, the educational quality of a course is the responsibility of others--accrediting associations, state agencies, the Office of Education, the Veterans' Administration, and the schools themselves--not the Commission. We cannot assume they will abrogate their responsibility. Nor can we appreciate a circumstance where schools would ignore their own stated educational goals merely to avoid disclosing data readily within their grasp.

Others criticized drop-out disclosures as having the potential to discourage schools from enrolling "high-risk" students or other

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[133] See, e.g., comments of NATTS, p. 70, Exhibit K-520; initial comments of AICS, p. 61, Exhibit K-867; comments of NHSC, p. 82, Exhibit K-439; comments of National Association of State Administrators and Supervisors of Private Schools, p. 3, Exhibit K-784; comments of M-W Corp., p. 14, Exhibit K-863; comments of Bell & Howell, p. 44, Exhibit K-856.

[134] See, e.g., testimony of B. Ehrlich, Counsel, NHSC, NATTS, & CAC, Tr. 9320.

"marginal" individuals who might benefit from vocational education.[135] However, a school's initial screening process should enable it to evaluate the prospective students' ability to benefit from the course. One of the bases of drop-out rate disclosures is that they will enable prospective students to identify schools which enroll unqualified students or others who are unlikely to complete. If the student is qualified, and thus can complete the course, these disclosures should not discourage the student from enrolling. The Rule also exempts from its coverage many such "high-risk" students, such as those enrolled in rehabilitation and other special training programs.[136] These students are not included in the Rule's defintion of "enrollee" and thus are not included in the disclosures. Finally, we are unpersuaded by an argument that asks the Commission to condone the continued enrollment at random of those very consumers who have been subjected to the worst of industry practices.

Another often-made criticism is that drop-out rate disclosures would portray a uniformly negative image.[137] This problem has been solved by requiring the disclosure both of drop-out and graduation rates. In fact, graduation rates are required to be disclosed before drop-out rates. Moreover, the word "drop-out" does not appear in the disclosures. Instead, "fail to complete" is used.

Another problem raised by residence schools has been that some do not have graduating classes or that some individuals graduate early or late.[138] The Rule has been changed in two ways to accommodate these types of schools. First, if a course has a fairly fixed class schedule, but some individuals graduate a little early or late, these individuals can be counted as graduates.[139] The Rule also accommodates those courses that do not have fixed class schedules but instead have programs where students study at their own pace. For this type of course, the Rule groups together all those who have enrolled in a base period, with the school reporting as of a certain date how many of those have graduated, failed to complete, or are still actively enrolled.[140]

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[135] See, e.g., testimony of W. Parrie, President, Athena Beauty College, Tr. 5330; testimony of C. Brown, Director, National Association of Cosmetology Schools, Tr. 5303; testimony of B. Ehrlich, Counsel, NHSC and NATTS, Tr. 9309.

[136] See paragraph (a) of Definitions supra, and Part II, Section IV-F, infra.

[137] See, e.g., comments of AICS, p. 60, Exhibit K-867; comments of LaSalle Extension University, p. 31, Exhibit K-237.

[138] See, e.g., comments of NATTS, p. 49, Exhibit K-520.

[139] See paragraph (f) of Definitions, supra.

Similarly, the method of calculation of drop-out rates for correspondence courses has been criticized.[141] The originally proposed Rule compared the number of students who dropped out in the past year with the number of students who enrolled in that year. Since many students who enroll in one year do not drop-out or graduate until the following year or later, it was argued that this was somewhat like comparing apples with oranges. If a course had a decreasing enrollment, the drop-out rate would be artificially high; if the enrollment were increasing, the drop-out rate would appear lower that it actually was, in comparison.

To clarify the intent of the Rule, the provision we are recommending has been changed so that the seller reports the percentages of those students who enrolled in a recent two-year period who graduated, who dropped out, and who were still actively enrolled. The disclosure is thus an accurate description of the experiences of an established group of the school's students. If in this two-year period some students do not have time to complete, the school discloses these as still actively enrolled.[142]

For all types of courses, residence or correspondence, the students included in the drop-out statistics are those enrolled in the class or period that most recently ended at least four months from the time the disclosures were made. This insures that the drop-out disclosures cover the same group of students as the placement disclosures, and also insures that prospective students are fully advised of the experiences of a previous group of the school's students.

The base period method allows for a two-year period for correspondence courses without fixed class schedules. This allows the disclosure of recent enrollees' experiences, time for the school to compile this data and also some historical perspective in the disclosures while at the same time requiring the school to recalculate the disclosures only twice a year. For example, in August 1976, a correspondence course would report on students who enrolled from January 1, 1974 to December 31, 1975, being the most recent four base periods that ended at least four months before the reporting date. But in November 1976 the school would report on the experience of students enrolled from July 1, 1974 to June 30, 1976.

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[140] _See_ subparagraph (b)(1)(ii) of the Rule, _supra_.

[141] _See_, _e.g._, testimony of C. Chase, Assistant to Chief Executive, Advance Schools, Inc., Tr. 8825.

[142] See subparagraph (b)(1)(iii) of the Rule, _supra_.

Perhaps one of the most often mentioned criticisms of the proposed Rule was the inclusion of non-starts[143] in the drop-out category.[144] Staff believes that under existing refund policies non-starts should be considered drop-outs since their financial obligation can be considerable,[145] but since the Rule limits non-start obligations to twenty-five ($25),[146] staff has excluded nonstarts from drop-out statistics.[147]

Another problem some schools might have had with the drop-out disclosures as originally proposed would be describing the rates for newly offered courses. The Rule has been amended so that schools that have a track record for other courses disclose that record to students interested in their new course. If a school is so new as not to have enough experience to report anything meaningful, the school merely discloses the fact that it has not been operational long enough to have a track record.[148]

One problem schools should not have is being able to obtain drop-out data on their students. There is clear evidence on the record that drop-out statistics are easily compiled and already are being kept by most schools.[149]

Thus the Rule's drop-out disclosure provision, while altered in some technical ways to meet particular practical considerations, still provides students with material information necessary for their purchase decisions, and will prevent other unfair or deceptive school practices.

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[143] Non-starts are individuals who are financially obligated to the school but do not attend any classes or send in any lessons.

[144] See, e.g., comments of NATTS, pp. 46, 62 and 68, Exhibit K-520; Initial comments of AICS, p. 50, Exhibit K-867; comments of Bell & Howell, p. 49, Exhibit K-856; comments of Manpower Business Training Institute, p. 4, Exhibit K-270; testimony of W. Greenly, President, Pacific Northwest Business School Association, Tr. 8401; testimony of F. Albanese, Executive Secretary Ohio State Board of School and College Registration, Tr. 6695.

[145] Under present refund policies non-starts can owe $50, $100, or sometimes more. See discussion at Part I, Section VI-B, supra.

[146] See subparagraph (e)(1) of the Rule supra.

[147] See paragraph (b) of Definitions and subparagraph (b)(1) of the Rule supra.

[148] See subparagraph (b)(1)(iv) of the Rule, supra.

[149] See Part I, Section VI-A(4), supra.

2. Placement and Earnings Disclosures

The Rule in subparagraphs (b)(2) and (b)(3) requires schools to include placement and earnings information in their Disclosure Forms if they make job or earnings claims. The record shows that failure to provide such disclosure is unfair or deceptive and that the disclosure is necessary to prevent other unfair and deceptive acts or practices.

As mentioned in our discussion of drop-out disclosures above, it is unfair or deceptive to fail to disclose information about a material fact where such failure may cause consumers to make erroneous assumptions or be unfairly harmed.[150] While drop-out information is highly material, there is no more critical piece of information in a vocational school consumer's purchase decision than placement information. The major reason virtually all students enroll in a vocational course is to get a job.[151] The schools themselves are in the business of training students for jobs, and openly and widely advertise this fact.[152]

There is widespread consensus among many groups that placement information is critical in evaluating the decision whether a consumer should enroll in a particular course. Numerous organizations and individuals have required or advocated affirmative disclosure of placement rates, including the Department of Health, Education, and Welfare, the Education Commission of the States, the Federal Interagency Committee on Education, congressional committees, a number of states, guidance counselors, consumer groups, educational experts, some schools, and others.[153] Congress has also mandated that the Veterans' Administration determine placement rates of schools before approving a course for utilization of veterans' benefits.[154] NATTS and AICS both require placement information from schools as part of the evaluation process to determine whether a school should be accredited.[155] Similarly, a number of states require placement information in order to determine whether a course should be approved.[156]

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[150] See note 94 supra.

[151] See Part I, Section III-E, supra.

[152] See Part I, Sections II and IV-B, supra.

[153] See footnotes 96-99 supra and Part I, Section VIII-B, supra. See also, e.g., testimony of W. Wilms, Center for Higher Education, University of California, Tr. 3195; testimony of H. Orlans, Senior Research Associate, National Academy of Public Administration Foundation, Tr. 2479; testimony of G. Belchick, California Dept. of Rehabilitation, Tr. 3781; testimony of J. Wich, Associate Professor of Marketing, University of Oregon, Tr. 4214; testimony of L. Vincent, Consumer Protection Center, Baton Rouge, La., Tr. 4252; testimony of D. Smith, American School Counselor Tr. 4278; testimony of K. Binkle, Director, Bay Valley Technical Institute, Tr. 4761.

Several guidance counselors and others in the occupational counseling field have described in detail the importance of placement information not only for students, but also for counselors, and studies have shown that students consider placement rates among the most important facts concerning a school.[157] Neither counselors nor students presently know very much about placement rates, and counselors see the need of such data not just to inform consumers, but to allow counselors and others to assist prospective students in making informed purchase decisions.[158]

The prospective student's need for placement information before making an enrollment decision is particularly acute in the case of proprietary vocational schools. First, most graduates do not get the job they enrolled to get, and an even smaller percentage of enrollees obtain such employment.[159] There is often virtually no demand for graduates of certain vocational school courses;[160] in other areas where there is a demand for entry-level trainees, the courses offered by proprietary schools provide inadequate training or placement services.[161] Still other schools enroll students who are unqualified in any case to obtain the advertised jobs, whether or not a demand exists or the training is adequate.[162]

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[154] *See* Part I, Section VIII-C(1), *supra*.

[155] *See* Part I, Section VII-F, *supra*.

[156] *See* Part I, Section VIII-B(1), *supra*.

[157] *See* Kenneth Hoyt, "The Specialty Oriented Student Research Program: An Illustration of Applied Computer Technology," *Educational Technology* (1971), Exhibit A-49; Kenneth Hoyt, "SOS: A Call to Action," *American Vocational Journal*, (May 1968), Exhibit A-50; Kenneth Hoyt, "Career Education and Career Choice: Implications for the VA," address presented to the VA National Task Force on Education and the Vietnam Era Veteran, Washington, D.C., Exhibit A-48; materials from Dr. Kenneth B. Hoyt, Professor of Education, University of Maryland, "Consumer Protection in Post Secondary Occupational Education, One View of the Problem and a Suggested Strategy for Solution," Exhibit G-71; Kenneth B. Hoyt, "SOS: The Last Ten Years," Director, Specialty Oriented Student Research Program, University of Maryland, Exhibit F-57.

[158] *Id.* *See also*, *e.g.*, testimony of G. Belchick, California Department of Rehabilitation, Tr. 3781; testimony of D. Smith, American School Counselor Assciation, Tr. 4278; testimony of D. Laramore, Supervisor of Vocational Guidance, Montgomery County Schools, Tr. 2960.

Second, while the overall placement picture is poor, there are wide variations among schools and courses as to placement success.[163] A consumer could enroll in some schools and be 100 percent certain of getting a related job, and enroll in others and be almost 100 percent certain of not getting a related job. Yet, the consumer is never made aware of this significant difference.

Third, the decision as to which career to enter and what type of training will best lead to that career is a difficult one. Even absent the misleading information that gluts this market,[164] experts have testified to the numerous complex factors that must be considered in making that decision: present and future demand, regional variations in demand, the students' own qualifications, the quality of training, the reputation of the school, and employers' hiring attitudes and practices.[165]

Added to this is the student's own youth,[166] limited education,[167] lack of experience with the labor market,[168] and general lack of sophistication.[169] Moreover, this unsophisticated consumer has to make this complex decision with little independent counseling or assistance, since guidance counselors and others do not themselves have adequate information to assist the prospective student.[170]

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[159] See Part I, Section VII-D(1), supra. As we have stressed before, there is often a significant difference between a school's placement rate when measured against only those who graduated as opposed to those who initially enrolled. This difference becomes increasingly significant as the drop-out rate becomes larger and larger.

[160] See Part I, Section VII-E(1), supra.

[161] See Part I, Section VII-E(2), supra.

[162] See Part I, Section VII-E(3), supra.

[163] See Part I, Section VII-D(2), supra.

[164] See Part I, Sections IV-B and VII-B, supra.

[165] See Part I, Section VII-B, supra.

[166] See Part I, Section III-B, supra.

[167] See Part I, Section III-C, supra.

[168] See Part I, Section III-E, supra.

Fourth, as discussed previously in the section outlining the basis for drop-out disclosures, the purchase of a vocational school course is not like buying an inexpensive or fungible commodity.[171] The cost of a wrong decision is substantial--sometimes financially or psychologically crippling. And the school cannot necessarily be relied upon to respond to free market pressures and offer a course worth the consumer's investment.[172] There is no such thing as multiple trial and error purchases of vocational school courses.

While consumers need placement information to make a rational purchase decision, they are not presently getting it. Schools are not making placement disclosures,[173] and in fact some strongly oppose any such disclosure.[174] Salespeople often do not know placement rates, and rarely disclose them accurately if they do know them.[175] While some accrediting associations require placement information to be reported to the association, this information is not passed on to students. Indeed, the counsel for three accrediting associations testified at the hearings that he did not consider placement rates a material fact needed to reach an enrollment decision.[176] Only a few states require such disclosure.[177] While the VA receives placement data from schools, it does not require that this information be disclosed to prospective students.[178] HEW's requirement that schools participating in the FISL program make a "good faith effort" to disclose placement information is not yet in effect and it is unclear how it will be implemented.[179] Thus, not only are schools not making such disclosures to students, but students are not getting this material information even when it does exist in the form of reports to public and private organizations.

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[169] See Part I, Section III-H, supra.

[170] See Part I, Section III-G, supra.

[171] See discussion at notes 111-117, supra.

[172] See Part II, Section V, infra.

[173] See Part I, Section VII-B, supra.

[174] See, e.g., testimony of G. Allen, President, Cleveland Institute of Electronics, Tr. 8728; comments of McGraw Hill, p. 23, Exhibit K-900; comments of Manpower Business Training Institute, p. 3, Exhibit K-270.

[175] See Part I, Section V-B and C, supra. But note that salespeople frequently imply that they know the placement rate of the school, and that the success rate is high.

[176] See testimony of B. Ehrlich, Counsel to NHSC, NATTS, & CAC, Tr. 9379.

[177] See Part I, Section VIII-B(1), supra.

Moreover, the disclosures will cure many misrepresentations concerning jobs and earnings. Within the proprietary school industry there is widespread and varied use of false or misleading job and earnings claims.[180] This includes specific claims of placement services, placement rates, and job success which are often false, misleading or unsubstantiated.[181] Just as widespread is the use of generalized claims about job demand or salaries in an industry.[182] Consumers often understand such general claims to be specific assurances that they will obtain jobs upon graduation, because they are not informed that general demand for a job does not mean that graduates of a particular school in a particular locality will obtain such jobs.[183] As discussed in more detail above, such general claims standing alone have the tendency and capacity to deceive a substantial number of vocational school consumers.

Thus, while the failure to make placement disclosures is in itself an unfair and deceptive act, the disclosures are also needed to prevent consumers being mislead by the unfair or deceptive job and earnings claims outlined above. Such claims, often oral, are so widespread and varied that any blanket prohibition would be difficult to enforce and overly burdensome on schools. A direct prohibition might chill some truthful claims and allow other inaccurate ones to slip through because of compliance difficulties. Instead, the Rule requires disclosure of accurate, substantiated data that can cure any deception caused by other job and earnings claims. Not only will these disclosures provide students with additional information with which to evaluate these other job claims, but they will discourage schools from making representations contrary to their actual placement record, since the incentives to do so would be much reduced.[184]

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[178] See Part I, Section VIII-C(1), supra.

[179] See Part I, Section VIII-C(2), supra.

[180] See Part I, Section IV-D, supra.

[181] See Part I, Sections IV-B(1) and VII(C), supra.

[182] See Part I, Section IV-B(2), supra.

[183] See Part I, Section IV-B(2), supra.

Moreover, in order to remain competitive schools will have incentives to display adequate placement records. This in turn will encourage schools to enroll only those who can benefit from their courses, to design effective courses with adequate placement services, and to offer courses only in areas where there is a demand for their graduates. All these results would improve the product choices available to consumers.

To insure that these purposes of the Rule's placement disclosures are carried out, it is essential that the Rule mandate a uniform format for such disclosure. Consumers must be in a position to compare the statistics of related courses. If schools were left to their own devices in developing disclosures, there would not be comparability from course to course.[185] For example, some schools' placement rates might be for all students, while others' might be only for graduates. Some rates would have one definition of a related job, some another. Some percentages would include only those "available for placement"; others will include everyone. A uniform format will also minimize the potential for schools to utilize deceptive placement statistics that do not really mean what consumers would take them to mean.

Indeed, the importance of placement data describing the school's own track record is so compelling that the staff would be disposed to recommend the requirement even for schools which makes no job claims. It seems to us that it is unfair for a school that holds itself out as vocational in orientation to fail to disclose such information. It is always material information for the consumer to know his job placement potential prior to his enrollment decision.

On the other hand, we recognize, as many industry members have commented,[186] that schools for various legitimate reasons may not wish to make any job or earnings claims. The course may be too new to have a track record. For peculiar reasons, the school may not be able to follow up on its students. Many students may not take a certain course for vocational reasons, or a school may consider itself solely an educational institution with no responsibility toward assisting its students in determining their job chances before enrollment. In any of these situations, a required disclosure would impose significant costs upon schools without adequate benefits to consumers.

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[184] See Part I, Section IV-B, supra.

[185] See Part I, Section VII-A, supra.

[186] See, e.g., comments of NATTS, p. 86, Exhibit K-520; comments of NHSC, p. 95, Exhibit K-439; comments of McGraw-Hill, p. 29, Exhibit K-900.

We have determined, therefore, that only schools that make job or earnings claims should be compelled to disclose their track record information. A school that does not make such claims must disclose the fact that, for whatever the reason, it is not making any job or earnings claims and is not disclosing to the consumer the school's prior placement data. The Rule provides four separate disclosures for schools to choose from.[187] In this regard, each school is free to decide whether it will engage in job and earnings advertising, and to calculate its need for maintaining records of past experiences accordingly. From the consumer's point of view, it insures that the prospective student will be confronted with advertising claims about employment or salary only when they are accompanied by hard data on the school's actual performance. We strongly feel that if schools are to continue to raise the inference of job and earnings potential they must disclose their actual performance in that regard.

The disclosure required of schools that do not make advertised claims serves two functions. It puts the consumer on notice that information about job chances must be found elsewhere because the school is disclaiming any desire or ability to provide it.[188] Second, the disclosure serves as a self-enforcing mechanism against unauthorized job or earnings claims by sales representatives or others by alerting the consumer to the fact that such claims have not been authorized by the school, cannot be substantiated, and therefore should be viewed with caution.

One of the most widespread criticisms of the proposed Rule was the inaccuracy or unfairness of the disclaimer required of schools that do not make job or earnings claims.[189] This problem has been remedied by completely redrafting the disclaimer and offering schools four options from which they are free to choose the one most applicable to their situation. The school can either state that its course is too new, its course is substantially avocational, it does not know the placement success of its students, or that the school does not wish to discuss the placement success of its students.[190]

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[187] See paragraph (b)(6) of the Rule supra.

[188] Drop-out disclosures are of a different nature. In the case of placement information, students, if they know they cannot rely on the school, may be able to get information from employers or others. Drop-out information is only available through the school. Moreover, there are no legitimate reasons why schools cannot make drop-out information available since it is always maintained as a matter of course by all schools.

[189] See, e.g., comments of NATTS, p. 86, Exhibit K-520; comments of NHSC, p. 95, Exhibit K-439; comments of National Association of State Administrators and Supervisors of Private Schools, p. 4, Exhibit K-784; comments of McGraw-Hill, p. 29, Exhibit K-900;
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Another major criticism of the placement disclosure requirement concerns its feasibility and cost. Some industry members have claimed that schools cannot obtain follow-up placement data on their students. Others have said that the data-gathering process, even where feasible, would be very costly.[191]

The evidence on the record demonstrates otherwise. Follow-up surveys can in fact be done cheaply and effectively. Testimony shows that proprietary schools, by preparing their students while still enrolled, keeping adequate student records, and then using mail-questionnaires and telephone follow-ups after graduation, should be able to obtain complete responses.[192] Particularly since the

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189 (Continued)

comments of Bell & Howell, p. 41, Exhibit K-856; comments of LaSalle Extension University, p. 25, Exhibit K-237. The disclaimer read:

> This school has no information on the number or percentage of its students who obtain jobs in the occupation for which we train them. Consequently, this school and its representatives have no basis on which to make any representations or claims about job opportunities available to students who take [name of course]. Prospective students are advised that enrollment in this course should not be considered vocational training that will result in employment in job positions for which this course offers instruction.

[190] See subparagraph (b)(6) of the Rule supra.

[191] See, e.g., comments of NHSC, p. 74, Exhibit K-439; initial comments of AICS, p. 31, Exhibit K-867; comments of M-W Corp., p. 17, Exhibit K-863; testimony of W. Wright, President, American School of Correspondence, Tr. 7319; testimony of Leroy Broesder, Vice President, Spartan School of Aeronautics, Tr. 7530.

[192] See Part I, Section VII-F(1), supra.

disclosures are required on a course-by-course basis, the total number of students that need be contacted for each course often will be relatively small.[193]

While schools should be able to achieve response rates of nearly 100 percent, the Rule does not require any such response rate, but only demands that schools disclose how many of their students they can substantiate as placed. Substantiation is not required for all students, but just those the school counts as placed.[194] The disclosure itself does not purport to be the school's complete placement rate, but is meant instead to describe the number and percentage of students which the school knows were placed. As the Disclosure Form explicity states,[195] what is being disclosed is the school's knowledge, based on its records, of its students' placement success. In addition, nothing in the Rule prohibits a school from explaining the nature of the disclosures to prospective students in its literature or during its recruiting presentations.[196]

For a number of reasons, we have considered and rejected the concept of eliminating non-respondents from the final statistics schools must disclose. If schools were permitted to base their placement rate on the ratio of students placed to students who responded to the school's inquiries, the schools would be encouraged to generate incomplete responses and to relax their follow-up efforts. For example, if elimination of nonresponses were permitted, a school could readily comply with the Rule by obtaining follow-up data only on students who had written testimonial letters to the school. Clearly, this would bias the results in favor of high placement rates.[197] Furthermore, such an approach would seriously complicate compliance investigations. It would be nearly impossible for the Commission's compliance staff to investigate the accuracy of the survey techniques of thousands of schools or to determine whether schools were discarding unfavorable questionnaires and claiming them to be non-responses.[198]

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[193] See Part I, Section II-B, supra.

[194] See subparagraph (b)(4) of the Rule supra.

[195] See appendices A-E of the Rule supra.

[196] Except for the restrictions of subparagraph (d)(3) of the Rule which prohibits certain job and earnings claims during the affirmation period.

[197] Moreover, we have reason to believe that even more complete and sophisticated surveys can be biased by not counting non-respondents who tend to be more disaffected with the course than respondents. See Part I, Section VII-F(1), supra.

[198] Some experts recommended use of third parties to conduct student surveys. See testimony of Dr. M.V. Eninger, (Continued)

Moreover, we had to confront the distinct possibility that the disclosures mandated by the Rule would ultimately develop into the advertising copy and sales claims utilized by the schools. A Rule which tolerated placement information to be computed as a percentage of those students placed to those students actually contacted by the school would, in effect, endorse the typical advertising approach of most schools.[199] As we have noted, schools broadly claim that a large percentage of their students get jobs.[200] The consumer is left to decipher what figures went into the numerator and denominator of the school's calculation. Were we to adopt the position advocated by the industry, we would be in the anomalous position of finding their advertising and sales practices to be deceptive and unfair while simultaneously requiring a remedy that endorses those practices.

Finally, as described above, schools should be able, with reasonable effort, to get a virtually complete response to follow-up efforts. The Rule's placement disclosures are not only feasible, but inexpensive. Available evidence indicates that a school, starting from scratch and following up on its graduates, can do this for about three dollars per graduate.[201] Compare this with tuitions that often run into the thousands of dollars,[202] and expenses for advertising and sales commissions that consume almost one-third of the tuition.[203] Even if we were to assume that a three-dollar cost was to be passed on directly to consumers in the form of higher tuition, it seems to us that the savings in avoiding

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198 (Continued)

President, Educational Systems Research Institute, Inc., Tr. 9422, and exhibits to testimony, Exhibit L-124; testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495. Such a proposal, however, would needlessly restrict schools with placement services or other existing follow-up efforts. It would also discourage schools from developing placement services. There are also practical problems in determining whether a third party is truly independent. But absent such a third party collection of data, there is a very real danger of bias and tampering in the collection and reporting of data. See Eninger op cit. While some of this is unavoidable, staff feels the throwing out of non-respondents would create a major potential for abuse.

[199] See Part I, Section IV-A, supra.

[200] See Part I, Section IV-B, supra.

[201] See Part I, Section VII-F(2), supra.

[202] See Part I, Section II-B(4), supra.

[203] See Part II, Sections IV-E and VI, infra.

erroneous choices and losses in wasted tuition expenditures would more than offset this minimal increase. Moreover, as described in greater detail in another section,[204] the fact that most schools do some form of graduate follow-up either voluntarily or in compliance with state or accreditation requirements, significantly reduces whatever additional cost that may be associated with complying with the Rule. If a school does not wish to expend even a minimal amount in finding out what happens to its students, it can refrain from doing so. If the school does not develop information on the placement experience of its students, it cannot make job or earnings claims.[205] The school is free to make the choice most consistent with its needs.

Some industry members have particularly questioned the feasibility of collecting salary information from graduates.[206] Staff has amended the Rule to insure that schools do not have any such difficulty. The original proposed Rule required substantiation that showed the graduates' exact salaries. Several experts have testified that while some students may resist disclosure of their exact salaries, they will readily check the appropriate box as to their salary range.[207] About one-fifth of one percent of students refuse to give salary information when asked in such range increments.[208] Consequently the Rule has been amended to require substantiation of students' annual gross salaries only in increments of two thousand dollars.[209]

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[204] See Part I, Section VII-F(2), supra.

[205] See subparagraph (b)(6) of the Rule supra.

[206] See, e.g., comments of NATTS, p. 63, Exhibit K-520; initial comments of AICS, p. 31, Exhibit K-867; comments of M-W Corp., p. 17, Exhibit K-863; testimony of S. Ritman, Medical Director, Gradwohl School of Laboratory Technique, Inc., Tr. 6798; testimony of M. Luskin, President, Marinello School of Beauty, Tr. 5546.

[207] For example, some graduates that might not state that their salary was $8,350 would check the right box--in this case the one that said $8000-$9000. See testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9422, and exhibits to testimony, Exhibit L-124; testimony of James Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495.

[208] See Eninger, op cit., Tr. 9422 and Exhibit L-124. See also Part I, Section VII-F(2), supra.

[209] See subparagraph (b)(4)(V) of the Rule supra.

The other substantiation requirements have also been simplified. Schools have argued that they are harmed if they are unable to count an individual as placed unless the exact recordkeeping requirements of the Rule are met. The staff has responded to these arguments (i.e., that the recordkeeping requirements of the proposed Rule are onerous for many schools) by significantly reducing their burden in the recommended Rule.[210] The school no longer has to record the address and telephone number of the student's employer, nor does it have to know the exact date of employment. Any evidence that the job was obtained within the required four months is sufficient. Schools need only record either the student's address or telephone number, not both, as previously required. And, as mentioned above, the salary information may be in increments of two thousand dollars. Thus, the only information the Rule now requires is the bare minimum to substantiate that a particular student got a related job within four months of leaving the school.[211] If the school meets the marginal requirement, it can count the student as placed.

One suggestion that has been raised is that schools be allowed to base their placement rates on a sampling of graduates, not the whole universe of graduates.[212] The Veterans' Administration, for example, only requires that for any course with more than 300 graduates, a sample of 300 graduates can be surveyed in fulfillment of its 50 percent placement rule.[213] Assuming that a sample of 300 is statistically valid, this size sample will provide little or no savings for almost all courses. The Rule requires the data to be kept by individual course, not by total school population. There are virtually no residence courses that graduate more than 300 students in a particular class.[214] Even major correspondence schools do not often graduate more than 300 from a particular course in a year.[215] For example, a school that enrolled as many as 15,000 students in a given year, with 1,500 in each of ten courses, and with a graduation rate of 20 percent, would only graduate 300 per course per year. In this regard, the Rule's requirements impose no greater burden than already imposed by Congress for courses that enroll veterans.

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[210] See, e.g., supplemental comments of AICS, p. 20, Exhibit K-867; comments of McGraw-Hill, p. 34, Exhibit K-900; testimony of R. Diggs, owner, Mechanics' School, Detroit, Tr.8167-69; testimony of G. Milhoan, Director, Arizona Automotive Institute, Tr. 5396.

[211] See subparagraph (b)(4) of the Rule supra.

[212] See, e.g., comments of Colorado Private School Association, Exhibit K-182; testimony of H. Elkins, Assistant Attorney General, California, Tr. 5124. Of course, the Rule as now drafted only requires the school to obtain information from those counted as placed.

[213] See Part I, Section VIII-C(1), supra. Note, however, that all schools with 300 graduates or fewer are required by Congress' new 50 percent placement rule to obtain information on all graduates and not merely a sample of graduates.

[214] See Part I, Section II-B(3), supra.

It would seem, therefore, that a handful of the thousands of vocational school courses offered would realize significant savings by a sampling technique. Balanced against these minimal savings are several factors. The cost of following up students is minimal in itself. The large schools will also likely realize certain additional efficiencies in their efforts due to their size. A sampling option will only serve to artificially increase these economies of scale for a few large schools as opposed to their many smaller competitors. These savings would be accorded a few schools at the expense of significantly complicating the Rule and its enforcement. In order to adopt a record-reporting provision that did not require reliance on an entire class, one would have to resolve a host of knotty questions: What sample size will be valid for the universe of all schools? What type of survey instrument will be dictated? What follow-up techniques for non-respondents? Should all surveys be conducted by independent third parties? Who is "independent"? How will the Commission oversee the validity of thousands of samplings conducted several times a year? It is our view that a sampling approach is fraught with difficulties that could seriously undermine the intent of the Rule to provide consistent and uniform job and earnings data. Not the least of such difficulties are enforcement problems arising from the increased potential for manipulation of the survey results.

Other comments argued that the format of the disclosure was ill-advised. We have responded to such criticisms by changing some aspects of the Disclosure Form, but keeping others. The present Rule, just as the original Rule, requires the disclosure of the percentage of both graduates and enrollees who got jobs. Industry members have argued that only the percentage of graduates who were placed should be mandated.[216] This is not surprising since this rate would virtually always be a significantly higher percentage than the percentage of enrollees who were placed. For example, a course with a 70-percent placement rate for graduates, but with only a 35-percent graduation rate, would find that less than 30 percent of its enrollees were placed. Staff believes that the material fact prospective students need to know most before enrolling is their chances of getting the job they want, not upon graduation, but upon enrollment. The question of primary importance to the prospective enrollee is what are his chances of obtaining employment. If disclosures were confined to graduates, the enrollee would assume his typical chance of obtaining a job was as good as the percentage expressed for graduates. In fact, this percentage is accurate only if the enrollee ultimately does graduate. Just as it is important for consumers to know a course's drop-out rate, it is also critical that they know their chance of placement when the drop-out rate is taken into account.

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[215] VA survey forms for major correspondence schools bear this out. See Part I, Section VII-F(2), supra.

[216] See, e.g., comments of NATTS, p. 69, Exhibit K-520; initial comments of AICS, p. 51, Exhibit K-867; comments of NHSC, p. 78, Exhibit K-439.

The record shows that many unsophisticated vocational school consumers will not be able to derive this fact just from a drop-out rate disclosure, and the placement rate based on the percentage of graduates. While certain mathematical calculations may be able to approximate the placement rate for enrollees, many consumers may ignore this calculation. The full import of drop-out and placement rates can be most meaningfully disclosed to a consumer if the placement rate for enrollees is also included on the Disclosure Form.[217] While the schools are in a position to explain, and possibly explain away,[218] the meaning of the mandated disclosures, the Commission must insure that its purposes in requiring disclosures are met if a consumer reads only the Disclosure Form.

While some schools have argued for a placement rate based solely on graduates, many schools have claimed that a placement percentage of graduates does not tell the full story--that many enrollees obtained employment before finishing their course and consequently dropped out.[219] One witness at the hearings told of a school adjacent to a shipyard where all enrollees obtained related jobs at the yard before completing the course. The school, while placing all its enrollees, had no graduates, and thus no graduates placed. By having a school disclose the placement rate for enrollees, these and related problems will be alleviated.

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[217] For correspondence courses and residence courses without fixed class schedules, the Rule bases the placement rate on the percentage of drop-outs and graduates who obtain placement. Actively enrolled students are excluded since they have not completed and are thus "still in school."

[218] See Part I, Section V-E, supra.

[219] See, e.g., testimony of P. Chosky, President, Electronics Institute, Tr. 5278.

Industry members argued against the inclusion of earnings information on the Disclosure Form.[220] As described above, earnings data are readily obtainable.[221] It is also vital information since only this data can insure that the placement rates are meaningful. While few would argue that placement rates should be based on students who obtained jobs for which the course prepared them, there is widespread debate about how a "related" job should be defined.[222] For example, a much discussed issue at the hearings was whether computer technicians or operators were positions related to a computer programming course.[223] Staff sees no easy way to resolve the question of when a job is related to a particular course, and no practical way to expand on the Rule's requirement that the job be one for which the school's course prepared the student.[224]

On the other hand, such an ambiguity could well lead to total emasculation of the meaning of placement disclosures. A placement rate may mean one thing to a consumer if 80 percent of the graduates of an airline training course become stewardesses and another if they become part-time ticket clerks. It is one thing to be a park ranger upon graduating from a conservation course and another to rake leaves.[225]

Staff feels that the only way to resolve this issue is to mandate a salary disclosure. Then, even if a school counts as placements low-level jobs in a related field, this fact will be clearly revealed to the prospective student in the salary disclosure. Particularly with the multiplicity of job titles associated with a given field, the only practical way to show consumers the job experiences of former students is to disclose earning levels. By knowing the salary ranges of former students, the prospective enrollee can evaluate the extent to which these students obtained jobs for which the school's training was a significant contributing factor.

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[220] See, e.g., comments of NATTS, p. 63, Exhibit K-520; initial comments of AICS, p. 31, Exhibit K-867; comments of McGraw-Hill, p. 25, Exhibit K-900; testimony of H. Rabin, President, Illinois Association of Trade and Technical Schools, Tr. 7518; testimony of M. Luskin, President, Marinello Schools of Beauty, Tr. 5546.

[221] See discussion at notes 206-209 supra.

[222] For example, in the discussion of placement studies in Part 1, Section VII-C, it was shown how researchers used different definitions for related jobs.

[223] See, e.g., testimony of W. Wilms, Center for Higher Education, University of California, Tr. 3195; testimony of J. Lynch, Control Data Corporation, Tr. 7396.

[224] See subparagraph (b)(3) of the Rule supra.

[225] See "Home Study Schools--Con Game or Wave of the Future," Boston Globe (March 27, 1974), Exhibit D-1. This is an extremely important issue in light of the fact that many jobs schools claim to prepare consumers for are jobs that could be obtained without any training by the school.

The significance of this salary disclosure cannot be overstated. For example, one researcher found that placement rates at proprietary schools rose as the salary level for the jobs they were placed in declined[226]--i.e., the more technical the field, the fewer the number of graduates placed, and the higher their salaries; the less technical the field, the greater the number of graduates placed, but the lower their salaries. Indeed, the high placement-low salary correlation was so direct that this researcher concluded that proprietary school graduates from disadvantaged backgrounds earned no more as a result of their training than they could have earned without any training.[227]

Earnings disclosures are also necessary to balance or substantiate the numerous and widespread earnings claims schools are making in their advertising and sales presentations.[228] Such claims are often misleading. General representations about salary levels in a career field do not tell consumers what graduates of a particular proprietary vocational school course make.[229] Specific salary claims for graduates of a course do not clearly disclose whether they are top, average, or minimum earnings or how many students obtained the advertised salary.[230] Thus, as with placement disclosures themselves, disclosures of earnings are a valuable mechanism for consumers to use in evaluating the accuracy of the school's advertising and sales representations.

Moreover, just as it is critical for a consumer in making an enrollment decision to know about his chances of getting a job, so it is vital in a purchase decision to see the range of possible salaries a consumer may earn in return for his investment of time and money.

Finally, we have modified the earnings disclosure in an attempt to simplify the Disclosure Form. Salary data will be revealed in increments of $2,000, not $1,000.[231] This will still allow consumers to get an idea of the range of salaries, and how many graduates fall within each subrange, while shortening and simplifying the form.

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[226] See Part I, Section VII-E(2), supra.

[227] See Wilms, id., p. 179, The Effectiveness of Public and Proprietary Occupational Training, Chapter 5, Exhibit C-110.

[228] See Part I, Sections IV-B(1) and IV-D(2), supra.

[229] See Part I, Section IV-B(2), supra.

[230] See Part I, Section IV-B(1), supra.

In another technical amendment to the Disclosure Form, staff recommends that schools be permitted to determine the placement success of their students four months after they leave the course,[232] not three months, as stated in the originally proposed Rule. The time period was extended to alleviate certain practical problems. For example, schools complained that a three-month period might not allow sufficient time for students who graduated in June and then took the summer off to find a job.[233] The four-month period should give these and other students ample time to find a job.

While to some extent this is an arbitrary cut-off date, staff arrived at this period after balancing a number of factors. Extending the period beyond four months would allow a few students to obtain jobs who had not been able to find them within this period. The evidence shows that this number will be relatively small.[234] Not only do a relatively small number of students find jobs in the fifth or subsequent months, but some students who had obtained related employment within the first few months may by then have lost those jobs.[235] Thus, extending the four-month period may even cause a diminution in the placement rate.

Against a possible slight net improvement in placement rates, one has to balance several factors. The longer the student is out of school the more difficult and costly follow-up efforts become.[236] The longer a school waits to measure placements, the more dated such information becomes when it is eventually reported to prospective students. The longer the time between a student's leaving the school and obtaining a job, the more likely it is that such employment was obtained because of some other factor--such as additional training, or intervening work experience. Moreover, most students, when they are considering enrollment in a course, want to know their chances of getting a job soon after they leave the course, not a year later. We should also note that four months is more than an adequate period of time for a qualified graduate to find employment if the course is as the school claims it to be, i.e., training that enables students to obtain jobs.

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[231] See subparagraph (b)(3) of the Rule supra.

[232] See subparagraph (b)(3) of the Rule supra.

[233] See, e.g., initial comments of AICS, p. 48, Exhibit K-867; comments of Bell & Howell, p. 44, Exhibit K-856; comments of Control Data Institute, p. 8, Exhibit K-862; testimony of A. Lusco, Counsel, West Virginia Association of Independent Colleges and Schools, Tr. 8618; testimony of N. Sedlak, owner, United Health Careers Institute, Tr. 5177.

[234] See, e.g., testimony of J. Ashman, Director of Special Research and Educational Assessment Programs, National Computer Systems, Tr. 9495; testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9422, and exhibits to testimony, Exhibit L-124; comments of Bell & Howell, Exhibit K-856.

[235] See testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9422, and exhibits to testimony, Exhibit L-124.

Another area of industry comment was the requirement that disclosures for residential schools be based on the experiences of enrollees who resided at the time of their enrollment in the metropolitan area or state where the disclosure is made.[237] While such a requirement has obvious merit,[238] its application would pose significant practical problems for schools. Staff recommends that such a requirement be abandoned.

While residence schools generally do not raise the issue, correspondence schools claim that many students enroll in courses for avocational reasons. Thus, the schools argue, they should not have to count these students in the placement data.[239] The responses to this are straightforward. If a course is truly avocational, it is not covered by the Rule in any case.[240] If a substantial number of students enroll for avocational reasons, the school has the option of not making job claims and then reporting to prospective enrollees that it is not making such claims because of the many students enrolled for avocational or *recreational* purposes.[241] Obviously, if claims are not made and thus disclosures not made, there is no burden associated with collecting data. If a school insists on making job claims even though a substantial number of students enroll for recreational reasons, the Rule has been amended to accomodate such a situation. The school can include with its placement data on the Disclosure Form itself the fact that many of its students take the course for non-job related reaons.[242] The school can, of course, also explain this fact in its advertising and sales presentations.

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[236] See Part I, Section VII-F(1), supra.

[237] See, e.g., comments of NATTS, p. 73, Exhibit K-520; initial comments of AICS, p. 53, Exhibit K-867; testimony of S. Ritman, Medical Director, Gradwohl School of Laboratory Technique, Inc., Tr. 6800; testimony of T. Balls, Vice President, Nashville Auto-Diesel College, Tr. 7710.

[238] See discussion of geographic variations in job markets at Part I, Section IV-B(2), supra.

[239] See, e.g., "NHSC Comment," Exhibit K-439; testimony of B. Ehrlich, Legal Counsel to NHSC and NATTS, Tr. 9272; testimony of W. Fowler, Executive Director representing the National Home Study Council, Tr. 9049; testimony of R. Barton, President, LaSalle Extension University, Tr. 8052; testimony of R. Kislik, President and Chairperson of the Board, Intext, Inc., Tr. 6755; testimony of R. Kislik, President and Chairperson of the Board, Intext, Inc., Tr. 1819; testimony of J. Thompson, President, Continuing Education Center of McGraw-Hill, Tr. 2071; testimony of J. Brown, President, National Home Study Council, Tr. 4921.

[240] See paragraph (c)(1) of Definitions supra.

While making this concession to such recreational enrollments, staff must note that it has found that, even among correspondence schools, most students enrolled in vocational courses either express a job objective or are required by law to have one.[243] Any more extensive statistical accomodation for the few avocational enrollments would needlessly complicate the Disclosure Form and increase the potential for bias and manipulation in the gathering and reporting of follow-up data. In this regard, note that many of the same schools that seek to persuade the Commission to alter the Rule to accomodate recreationally oriented students by submitting surveys showing the avocational purposes of their students, are simultaneously submitting surveys to the VA showing the opposite results.[244]

Staff finds even less merit in making special accomodation in the Rule's disclosure requirements for students who have vocational purposes but are "unavailable for placement" upon graduation.[245] These students are not a significant percentage of graduates.[246] Moreover, many students that schools label as unavailable for placement are only so because they cannot get jobs. For example, students who enter other training or educational programs, the military, or other jobs because they despair of obtaining their desired employment on the basis of their proprietary vocational school course, are counted by schools as "unavailable for placement." Other students, on determining that a school's placement service is totally inadequate, may be considered unavailable for placement because they do not contact that placement service.

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[241] *See* subparagraph (b)(6)(ii) of the Rule, *supra*.

[242] *See* subparagraph (b)(5) of the Rule, *supra*.

[243] *See* Part I, Section III-E, *supra*.

[244] *See* Part I, Section III-E, *supra*.

[245] *See*, *e.g.*, comments of NHSC, p. 77, Exhibit K-439.

[246] *See* testimony of Dr. M.V. Eninger, President, Educational Systems Research Institute, Inc., Tr. 9422, and exhibits to testimony, Exhibit L-124; Veterans' Administration, Survey of Employment Following Training in Vocational Schools, DVB Circular 20-74-113 (May 12, 1975), Exhibit H-205.

Even if only legitimate reasons were grounds for excluding the student from the placement calculations, it would be difficult to draft clear-cut and enforceable categories without significantly complicating the Rule. But, if left undefined, the "available for placement" concept is so vague and fraught with potential for manipulation that its inclusion in the Rule would seriously undermine the very purpose of the placement and salary disclosures.

While staff rejects incorporating the concept in the Rule's mandated disclosures, nothing prevents schools from trying to explain to students the reasons for its final placement rate. Moreover, the few legitimate reasons for a student's unavailability for placement--sickness, death, pregnancy, or the like--tend to be fairly insignificant and constant among similar courses, and thus will not place any school at a competitive disadvantage in a comparison of placement rates.

Staff must reiterate that a placement rate is only a school's statement of what it knows about how many of its students got related jobs. Its purpose is to show prospective students their chances on enrolling of getting related jobs--not just the chances if they graduate, or if they stay healthy, or if they don't have to go on for further training, or if they don't change their minds. All suggestions to amend the Rule in these respects would result in a significant undermining of the Rule's utility in passing on uniform information to potential buyers.

Finally, industry members have criticized the original Rule's disclosure provisions for new courses or schools as being impractical or unfair.[247] Staff has responded by simplifying this requirement. If a school does not have a track record to substantiate specific job or earnings claims, it cannot make them. It then discloses the fact that, since the school is new, it does not know what will happen to its graduates.[248] Since the disclosure provisions of the Rule are partially predicated on the fact that such unsubstantiated claims are misleading and can cause harm to consumers who rely on them, it would be anomalous for us to condone such claims by new schools, or schools that offer new courses.

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[247] See, e.g., comments of NATTS, p. 76, Exhibit K-520; comments of NHSC, p. 89, Exhibit K-439; comments of Control Data Institute, p. 10, Exhibit K-862; testimony of W. Greenly, President, Pacific Northwest Business School Ass'n., Tr. 8401. That provision allowed new courses to advertise job commitments they got from employers to hire their course's graduates even though that class had not graduated.

[248] See subparagraph (b)(6)(iv) of the Rule supra.

Moreover, a new course exception would raise difficult compliance problems. A school could readily avoid the disclosure provisions of the Rule by simply redesignating its courses as "new" and taking advantage of the new-course exception. We would be faced with having to determine whether the course was in fact "new." Needless to say, there is no recognized or convenient way to make such a judgment, since there are no standards that will readily delineate how much of a change constitutes a significant alteration of a course.

On the other hand, it has been argued that a total ban on new courses' job and earnings claims could discourage the development of new courses to meet recent increases in job market demand in a particular field or could act as a market barrier to entry to new schools.[249] For these reasons, new courses for a limited period of time--until they have a track record of their own graduates to discuss--can make *general job and earnings claims* about salaries and job market demand in the field for which the course trains students. Such claims then trigger the disclosure for generalized claims described above, which requires discussion of some of the limitations of such claims, including differences among geographic areas and additional education and experience prerequisites.

As with the drop-out disclosure provision, the placement disclosure has been modified in certain technical ways. But it continues to insure that students receive material facts with which to make their purchase decision and to prevent unfair or deceptive school practices.

D. *Affirmation*

The Rule specifies the particular manner in which disclosures are to be made. Each consumer who signs a contract must receive a Disclosure and Affirmation Form. In most cases the school must mail the student the Disclosure Form after the enrollment contract is executed. The enrollment is not binding until the consumer has signed that Form and returned it to the school. For mail enrollments, the school can mail the disclosures at any time, and the consumer can deliver the signed Form to the school any time thereafter.[250]

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[249] *See*, *e.g.*, testimony of P. Chosky, President, Electronics Institutes, Tr. 5280.

[250] *See* paragraphs (c) and (d) of the Rule *supra*.

These requirements are based on two considerations. First, they are necessary to insure a meaningful disclosure of the dropout and placement information. Second, these procedures are needed because a cooling-off period is not sufficient protection for consumers when they decide to enroll in a proprietary vocational school.

Turning to the first of these two bases, it is clear that if the Commission requires that certain disclosures be made, it can prescribe that they be meaningfully disclosed. That is, the Commission can take those steps that are necessary to insure not only that material information is disclosed, but that it is disclosed in such a fashion that consumers can understand its intended meaning, derive benefit from it, and fairly utilize that data in their purchase decision. This has been done in other trade regulation rules[251] and in individual cases.[252] In the vocational school context this means that the disclosures are best made in a context that isolates the student from the influences of the school. There is ample evidence on the record that salespeople could nullify the impact of the mandated disclosures and even twist them around to become another tool in a deceptive sales presentation.[253]

Moreover, as we demonstrated in an earlier part of this section, the disclosures are intended to serve in part to remedy numerous oral misrepresentations and misleading claims concerning jobs and earnings. It is particularly important that placement information be disclosed separately from this barrage of misleading job claims. The impact of the disclosures would be completely nullified if they were not provided in a format distinct from the normal sales and advertising pitch.

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[251] See F.T.C. Trade Regulation Rule: The Failure to Post Minimum Octane Number on Gasoline Dispensing Pumps Constitutes an Unfair Trade Practice and an Unfair Method of Competition, 36 F.R. 23871 (1971); effective date stayed and plaintiff's motion for summary judgment granted in suit questioning F.T.C. authority to promulgate TRR's; National Petroleum Refiners Association v. F.T.C., 340 F. Supp. 1343 (DDC 1972), reversed and remanded, 482 F.2d 672 (DC Cir. 1973), cert. denied, 415 US 951 (1974); F.T.C. Trade Regulation Rule, Care Labeling of Textile Wearing Apparel, 36 F.R. 23883 (effective July 3, 1972); F.T.C. Trade Regulation Rule Relating to Incandescent Lamps (Light Bulbs), Disclosure of Lumens, Life, Cost and Other Data, 35 F.R. 11784 (effective January 25, 1971); and F.T.C. Trade Regulation Rule: Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 39 FTR 15387 (effective November 4, 1974).

[252] See, e.g., United States v. J. B. Williams Co., Inc., 498 F.2d 414 (2d Cir. 1974).

[253] See Part I, Section V-E, supra. Salesmen have shown themselves to be extremely adroit at manipulating all types of information to the advantage of securing a signed enrollment contract. See, e.g., testimony of W. Kelly, Tr. 3417.

For these reasons, staff is recommending that the Disclosure Form be presented to the consumer after and apart from his session with the salesperson or other school representative, allowing the prospective student a chance to evaluate the disclosures independently. Of course, the school can, if it wishes, show and discuss the Disclosure Form to the consumer before or even during the oral sales presentation. However, it is required to mail the Form to the consumer after the sales presentation process is completed in order that it is ultimately received by the consumer when he is outside of the school's influence.

Schools should not be allowed to legally obligate consumers through enrollment contracts on the basis of the sales presentation alone. The record makes clear that consumers cannot make rational purchase decisions without first evaluating the placement and drop-out information contained on the Disclosure Form. If the Commission finds such disclosures to be material, then it must provide a mechanism to insure that that materiality is preserved and to insure that no binding obligation attaches until the information is received. Thus, no enrollment should be valid until after the student has had a chance to study these data. Consumers generally, and peculiarly vulnerable ones in particular, should not be put in a position of making a purchase, finding out later what they bought, and then cancelling their obligation only by taking affirmative action within a given period of time. The difficulty of evaluating a future service such as vocational education argues for some mechanism that requires the consumer to be bound to the purchase only after making a decision predicated on accurate facts about the school received in a non-sales context.

On the other hand, it might place a hardship on schools and consumers alike if salespeople were not able to help prospective students fill out the complicated school and government forms necessary before an enrollment could be effective. Thus the Rule allows the enrollment contract to be filled out and tentatively signed while the salesperson is still there to assist the consumer. This contract is, however, not binding. The Rule mandates that the contract itself state that it is not effective until the student returns a validly signed Disclosure Form to the school.[254] It is only then, after consumers have evaluated the information needed to make a rational purchase decision, that it makes sense for them to bind themselves to the enrollment. In essence, we have allowed the school and its representatives to conduct their enrollment process in any way they see fit and in representations and claims through advertising, pamphlets, and presentations to explain, evaluate or even deprecate, the meaning of the information required by the Rule. However, at some point the consumer must be freed from these solicitation influences to evaluate the disclosed data independently--including comparison with other schools and consultations with guidance counselors. To do so properly, we feel the consumer should not be bound by a contract that may have been signed without adequate reflection under the influence of unsubstantiated claims in the presence of a commissioned school representative.

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[254] See paragraph (d)(5) of the Rule supra.

While industry members have criticized the requirement as abridging already existing contracts,[255] the Rule, in fact, only mandates that certain material disclosures be made in a meaningful manner before a binding contract is made. Industry arguments in this regard amount to a claim that once a signature has been obtained, no matter what the pre-enrollment abuses, the consumer becomes bound. We reject the notion that signatures are dispositive of this question. There is ample precedent for the Commission mandating disclosures before contracts are effective or otherwise conditioning contracts' binding effects.[256]

The affirmation requirement also rests on another ground--that in the vocational school transaction more than the traditional cooling-off is necessary to allow the consumer to evaluate and rethink the purchase decision.[257] The Cooling-Off Rule, for example, protects consumers by giving them three days to withdraw from a contract to purchase any item sold door-to-door. Its intent is largely to give consumers a period of time away from the pressures of a sales presentation to reconsider the purchase decision and to provide a minimum period during which comparison shopping can occur.

While the Cooling-Off Rule may offer sufficient protection to most consumers, it does not do so to the purchasers of vocational school courses. This fact is attested to by the actions of a number of government agencies. A number of states have adopted cooling-off periods for vocational school sales that are longer than three days,[258] indicating that the vocational school transaction is sufficiently unique to require, at a minimum, a longer time period. Congress has required that veterans not only must be given 10 days to reconsider their decisions to utilize their VA benefits for enrollment in a correspondence course, but that this decision must be reaffirmed in a manner similar to that in the proposed Rule. The veteran must wait ten days and then sign and mail in the affirmation.[259] The Federal Interagency Committee on Education thinks government funding and guarantee agencies should require schools to have a ten-day affirmation period as a requirement for eligibility,[260] not merely a cooling-off period.

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[255] See, e.g., comments of NATTS, Exhibit K-520.

[256] Cooling-Off Period for Door-to-Door Sales, 38 F.R. 33766 (December 7, 1973) (Effective June 7, 1974); Arthur Murray Studio of Washington, Inc., 78 F.T.C. 434 (1971), aff'd, 458 F.2d 622 (5th Cir. 1972); Windsor Distributing Co., 77 F.T.C. 204 (1970), aff'd, 437 F.2d 443 (3rd Cir. 1971); Household Sewing Machine Co., Inc., 76 F.T.C. 207 (1964); Universal Electronic Corp. 78 F.T.C. 265 (1971); New York Jewelry Co., 74 F.T.C. 1361 (1968), aff'd sub nom, Tashof v. F.T.C., 437 F.2d 707 (DC Cir. 1970).

[257] The affirmation requirement replaces a cooling-off period, and consequently the Rule exempts vocational school sales transactions from operation of the three-day cooling-off period. See subparagraph (c)(6) of the Rule supra.

Even the industry has recognized the need for additional protection. At the hearing in this proceeding, AICS suggested a five-day cooling-off period as an alternative to affirmation.[261] Two major correspondence schools have recently implemented a system by which enrollees are called back to ascertain if there were misrepresentations by salespeople and if the consumer still wishes to enroll. If not, a full refund is made.[262] Wisconsin's refund law requires a full refund to any student enrolled by use of a false or deceptive claim.[263]

There are several reasons for the necessity of this added protection. Cooling-off periods that require the student to act to disenroll seem to have failed to protect consumers, or to create disincentives for schools to engage in false and deceptive enrollment practices. Sales abuses in this industry are unusually widespread and pernicious,[264] despite the fact that many schools have been operating under a three-day cooling-off period for some time.[265] The consumers involved are particularly vulnerable.[266] The product is a special one--an individual's career opportunity and educational advancement. If a wrong choice is made, the consumer injury is substantial, since we are dealing with a long-term contract that involves a substantial monetary and psychological investment.[267]

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[258] See Part I, Section VIII-B, supra.

[259] See Part I, Section VIII-C(1), supra.

[260] "A Federal Strategy Report for Protection of the Consumer of Education," FICE Subcommittee on Consumer Protection (September 18, 1974), with "Executive Summary of the Report and Major Recommendations," Exhibit H-95.

[261] See testimony of Harry V. Weber, Executive Director, representing Spencerian College and Louisville Technical Institute, Tr. 6926.

[262] See testimony of R. Kislick, President and Chairman of the Board of Intext, Inc., Tr. 6755; testimony of Robert A. Barton, President, LaSalle Extension University, Tr. 8052.

[263] See State Laws, Rules and Regulations Affecting Proprietary Vocational Schools and their salesmen, Exhibit G-1.

[264] See Part I, Sections IV and V, supra.

In fact, the decision is so important that one would expect rational consumers to consult with guidance counselors, educational experts, or others before making an enrollment decision, a process that could easily take more than three days, particularly if testing is involved.

There is also another fundamental difference between the commodity sold by vocational schools and most other goods sold door-to-door. The salespeople who go door-to-door peddling encyclopedias, pots and pans, furniture, vacuum cleaners, and magazines are selling a tangible good. As the Statement of Basis and Purpose of the Door-to-Door Sales Rule makes clear,[268] the three-day cooling-off period was intended to provide the consumer with a period in which to do the type of comparison shopping generally associated with sales made outside the home. The assumption of the three-day Rule was that any sales misrepresentations about the price, quality, or nature of the goods sold to the consumer would be readily cured during the three-day period if the consumer made telephone or other inquiries about competing products.[269]

This assumption is not applicable to vocational school courses. There is no tangible good for the consumer to see and test. The ability to comparison shop as to course content and quality is, by its very nature, elusive, if not impossible. The only hard evidence that a prospective student might find useful--drop-out rates and placement success--can be artfully manipulated in a high-pressure sales pitch, assuming they are disclosed at the time of sale.

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[265] NATTS, NHSC, many states, and the F.T.C. have had such a requirement for a number of years. See Part I, Section VIII-B, and Exhibits F-12 and F-34.

[266] See Part I, Section III, supra.

[267] See Part II, Section V, infra.

[268] See 37 Fed. Reg. 22934 (October 26,1972), at 22937-39.

[269] "The door-to-door selling technique strips from the consumer one of the fundamentals in his role as an informed purchaser, the decision as to when, where, and how he will present himself to the marketplace... Gone...is the chance to reflect, compare, decide, walk away." 37 Fed. Reg. 22934, (October 26, 1972), at 22939, fn. 44.

Moreover, the vocational school salesperson has available a selling tool that few other salespeople possess. Unlike the ordinary salesperson who must overcome the consumer's normal restraint in expending his or her own money, the vocational school salesperson comes prepared to offer the consumer government grants, low interest loans, and G.I. benefits. This serves to lessen consumer vigilance, and makes it even more unlikely that the prospective student will shop around for a "better deal."[270]

In addition, there is evidence that the traditional cooling-off period can easily be circumvented.[271] Salespeople can and do leave students with the impression they may not be admitted (although, in fact, everyone is accepted by the school). Thus students, if they change their minds, do not bother to cancel because they do not think they are enrolled. "Acceptance" invariably comes after the three-day cooling-off period has expired, leaving the student with no legal cancellation remedy. Moreover, sales manuals instruct salespeople to warn students not to talk over their enrollment decision with friends or family because they may not be admitted and thus may be embarrassed.[272] This, of course, is a blatant attempt by schools in their instructions to salespeople to circumvent the three-day cooling-off period by chilling the consumer's opportunity to compare services and receive outside opinions.

Moreover, the record shows that many students do not even know they have signed a binding contract.[273] A cooling-off period makes little sense for such students. Only an affirmation requirement will allow them to decide if they really wish to enroll and impress upon them the contractual nature of the transaction.

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[270] See Part I, Section V-C(3) and VIII-C, supra.

[271] See Part I, Section V-C, supra

[272] See Part I, Section V-C, supra.

[273] For example, one state official explained:

> Our experience has been that students are told to sign the agreement, not particularly to worry about it because it has to be approved by the home office and so forth and so on so it's signed and the student doesn't really feel he's contracted at that point in time and the ten days could easily pass prior to the time the school communicates acceptance.

Testimony of B. Craig, Assistant Attorney General, State of Wisconsin, Tr. 7053. See also student complaint letters, Exhibit J-1; testimony of J. Vogel, Supervisory Collections Officer, USOE, HEW, Tr. 7758.

In fact, some might even argue that it is implicitly unfair and deceptive for commissioned salespeople, with no background in education or career counseling, and with a financial stake in the decision, to be selling educational courses.[274] Particularly considering the ineffective control of the salespeople by the schools, the accrediting associations, and the states,[275] the Rule's affirmation requirement offers a mechanism which permits vulnerable students to re-evaluate their enrollment decisions in light of the mandated disclosures and discussions with friends and family, away from the pressures of commissioned salespeople.

The proposed reaffirmation period is warranted not only because it will safeguard consumers, but also because it is required to prevent schools from utilizing unfair and deceptive enrollment techniques. If consumers get a chance to re-evaluate their purchase decisions away from the salesperson's pressures, and then have to affirm that contract, schools and their salespeople will be discouraged from trying to sign up, on the spot, individuals who really do not want to, or are not qualified to enroll. Many salespeople may be willing to engage in misrepresentations and pressure a student into enrolling providing the student does not purposively act to withdraw within three days. This is particularly worth the risk if the three-day cooling-off period can be circumvented and obfuscated. But if a student can rethink the enrollment decision on the basis of material information before affirming the contract, schools may not find it profitable to use unfair or deceptive sales techniques. Indeed, it would be difficult to imagine a school spending substantial resources attempting to enroll those who are least likely to affirm and enroll. In this regard an affirmation period creates positive incentives for schools to seek to enroll only those who are actually interested in, qualified for, and committed to a vocational course of study.

While we find ample justification for this affirmation requirement in enrollments involving sophisticated pitches by commissioned salespeople, or otherwise involving oral representations, there is less need for these special safeguards if the enrollment is handled entirely by mail. In those transactions the Rule only prescribes that the school send the Disclosure Form to the buyers at any time, and before the enrollment is effective, consumers must sign and return the form to the school as evidence that they have read and understood the disclosures.[276] There is no need to require the disclosure after the sales presentation because there is, by definition, no sales presentation. Moreover, since only written representations--whose compliance with the advertising section of the

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[274] See Part I, Section V-E, supra.

[275] Id.

[276] See subparagraph (c)(1) of the Rule supra.

Rule can be easily enforced--are made, there is much less likelihood of misrepresentations and high pressure tactics than where oral representations and sales pitches are involved.

Some industry members have argued that the Commisson itself has explicitly rejected the affirmation concept in the Statement of Basis and Purpose for the Cooling-Off Rule. It is argued that the Commission should evaluate the effectiveness of the cooling-off concept before changing its previous position in the Cooling-Off Rule and adopting affirmation in this proceeding.[277]

This argument is faulty for a number of reasons. First, schools have been operating with three-day cooling-off periods of one form or another for a number of years,[278] but the sales abuses and faulty enrollment decisions persist.

Second, for the reasons outlined above--vulnerable consumers, widespread sales abuses, misrepresentations, the future service nature of the purchase, the significance of a career decision, potential for significant consumer injury--enrollment in a proprietary vocational school course is a special purchase decision and a cooling-off period is not sufficient to safeguard consumers. There is ample precedent for the Commission determining that in certain contexts remedies considerably more vigorous than those in the Cooling-Off Trade Regulation Rule are needed in an attempt to prevent abusive sales practices.[279]

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[277] See, e.g., comments of NHSC, p. 112, Exhibit K-439; comments of McGraw-Hill, p. 34, Exhibit K-900; comments of M-W Corp., p. 22, Exhibit K-863; comments of Bell & Howell, Exhibit p. 45, K-856.

[278] See note 265 supra.

[279] In Arthur Murray Studios of Washington, Inc. (note 256, supra), the Commission included in its order a seven-day cooling-off period and limited the financial obligation for future services in a contract to $1500. The Commission found:

> ...intense, emotional and unrelenting sales pressure to persuade a prospect or student to sign a long-term contract and that such a person is insistently urged, cajoled, and coerced to sign such a contract hurriedly and precipitatedly through use of persistent and emotionally forceful sales presentations which are often of several hours' duration.

The Commission held that the contract limitation bore a reasonable relation to the unlawful practices, i.e., the oppressive sales techniques. In addition, the seven-day cooling-off period alone was not adequate as a remedy because:

(Continued)

Third, the Cooling-Off TRR was not designed specifically for a situation where fundamental disclosures were not being made. That Rule just allows consumers to back out of a contract they made while under pressure, but presumably with a fairly adequate idea of what they bought. In the vocational school sale certain disclosures must be made before the consumer can make any rational decision to enroll at all. These disclosures can be made meaningfully only away from the salesperson's pressures. Then, and only then, can a decision to enroll be made. It does not make sense to bind consumers to a purchase without their knowing what they have bought, even if they are given the right to rescind.

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279 (Continued)

> While this provision will, of course, be of value, we have no reason to believe that all students who succumb to respondents' unfair practices will demand within seven days to be released from the contract merely because there is a notation in the contract that they may do so. Moreover, it is quite apparent from the testimony that many of the students are in such a confused and highly emotional state when they execute the contract that it is unlikely that they are even aware of notation.

The Fifth Circuit affirmed the order, with the main issue on appeal being whether the $1500 contract limitation met the National Lead standard of bearing a reasonable relationship to the unlawful practices found to exist.

Even more restrictive remedies were ordered in Windsor Distributing Co. and Universal Electronics Corp. (note 256 supra). Based on findings of widespread deception and sales abuses, the Commission ordered a number of conditions on the binding effect of sales contracts for vending machines. In addition to imposing a three-day cooling-off period, the Commission ordered that contracts not be binding until the vending machines have been installed to the customers' satisfaction and the customers have affirmed this fact in writing. Moreover, if the customer can demonstrate a violation of the F.T.C. order in the seller's contract, solicitations, or performance, the customer may rescind and receive a full refund. Thus, the Commission goes beyond conditioning a valid contract on the utilization of certain disclosure and enrollment procedures. A binding contract can only take place after full performance and buyer's indication of approval, not just of the performance, but of the whole transaction. The Windsor case was appealed to the Third Circuit, which affirmed per curiam, noting "the order is well within the area of Commission discretion in framing relief appropriate to termination of the unfair practices found to exist." (437 F.2d 443).

Other industry members argued that affirmation is not workable--that it would cause serious disruption of school operations and cause many students to be unintentionally disenrolled.[280] However, the evidence shows that the concept of affirmation is clearly workable. Hundreds of thousands of veterans are enrolled every year in correspondence schools after they have affirmed their contracts no sooner than ten days after signing their initial contract. Moreover, numerous schools have described enrollment procedures far more complex than anything mandated by the Rule. Many schools testified that students visited the school, were later tested, and were, at a third date, informed of their acceptance.[281] This multi-stage enrollment process does not discourage serious students and there is no reason to believe an affirmation requirement would either. The evidence shows that truly interested and committed students will follow whatever requirements there are for enrollment.[282] In that regard, affirmation should assist schools in identifying committed prosepective enrollees, and avoiding those whose enrollment decision was impulsively made or erroneously induced.

Changes in the Rule

A number of technical aspects of the original affirmation requirement have been altered in response to constructive suggestions. Students no longer must affirm within ten days--they can affirm at any time.[283] The school, of course, can set whatever additional limitations it wishes as to how long it will accept enrollments, but absent such a school-imposed restriction, the affirmation is not confined to a ten-day period. This should avoid situations where the student inadvertently missed the ten-day period because of faulty mail service or otherwise.[284] This amendment also avoids any possible conflict between the Veterans' Administration's and the original Rule's ten-day affirmation periods, where the VA required affirmation after ten days, and the Commission before ten days.[285]

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[280] See, e.g., comments of NHSC, p. 111, Exhibit K-439; comments of M-W Corp, p. 22, Exhibit K-663; comments of Bell & Howell Schools, p. 45, Exhibit K-856; testimony of L. Howard, Michigan Organization of Private Vocational Schools, Tr. 7454.

[281] See, e.g., testimony of W. Greenly, President, Pacific Northwest Business School Association, Tr. 8390; testimony of A. Fusco, Counsel, West Virginia Association of Independent Colleges and Schools, Tr. 8608; testimony of N. Sedlak, owner, United Health Careers Institute, Tr. 5171.

[282] See, e.g., testimony of M. Honor, owner, Honor Business College, Tr. 3917; testimony of D. Smith, American School Counselor Association Tr. 4289; testimony of W. Butler, Training Representative, CIE, Tr. 4911.

[283] See paragraph (d) of the Rule supra.

[284] This was one problem frequently raised by school owners and representatives. See, e.g., comments of NATTS, Exhibit K-520, pp. 92-96; initial comments of AICS, pp. 65-71, Exhibit K-867.

Thus, in the case of residence courses, the student--if the school permits--can bring the Disclosure Form on the first day of class or even on subsequent days.[286] For correspondence courses, the student can submit it with the first (or subsequent) lessons. Thus the requirement as amended virtually eliminates the possibility that a school will have to disenroll a student who really wishes to remain enrolled.

The Rule does prevent schools from holding down-payments in perpetuity waiting to see if a student will affirm at some later date. If, after three weeks a student does not affirm, all monies and evidences of indebtedness must be returned within another three weeks.[287] While a school must return the down-payment after six weeks, the student can still enroll simply by sending in the Disclosure Form even after that six-week period if the school is inclined to accept him or her.[288]

Other schools complained of the requirement that the Disclosure Form be sent to the student by certified mail, return receipt requested, pointing out numerous practical difficulties.[289] This prescription has been abandoned.[290] Since the Form does not have to be returned within ten days, there is no longer a compelling reason to document when the ten-day period began and ended.

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[285] See Part I, Section VIII-C(1), supra.

[286] The school, of course, would allow such a student to enroll at its own risk. If a Disclosure Form is never submitted, the student has no financial obligation under the contract. This risk is similar to the one a school might incur if it allowed a student to attend classes during a cooling-off period not knowing whether the student will withdraw.

[287] See subparagraph (d)(2) of the Rule supra.

[288] Again, this assumes that the school does not create additional enrollment restrictions. Moreover, the school may wish an additional down-payment before it accepts the enrollment. But these added requirements are entirely optional and at the school's discretion.

[289] See, e.g., comments of NATTS, p. 93, Exhibit K-520; initial comments of AICS, p. 67, Exhibit K-867; comments of NHSC, p. 99, Exhibit K-439; comments of M-W Corp., p. 22, Exhibit K-863; testimony of L. Wells, owner, Liemert Park Beauty College, Tr. 5620; testimony of T. Balls, Vice President Nashville Auto-Diesel College, Tr. 7709.

[290] See subparagraph (c)(1) of the Rule supra.

While industry members might object to the proposed Rule's requirement that the Disclosure Form be mailed without accompanying materials in the same envelope, staff believes that this is just as important as that it be delivered to the consumer away from the pressures of the salesperson. Additional information in the same envelope could dilute the disclosure's impact. For example, a seller could enclose in the same envelope dozens of forms and brochures. While the Rule consequently requires the Disclosure Form to be mailed without any accompanying materials,[291] the seller can before, after, and even at the same time mail the consumer other materials in separate envelopes.[292] But the separation is important so that consumers can isolate the required data from the sales puffery and other materials.

Causing stronger industry objections[293] was the proposed Rule's requirement that prohibited all written contact between the school and the consumer from the time the consumer received the Disclosure Form until the ten-day period expired.[294] The original Rule thus created a full isolation from written materials for the consumer while he was considering whether to affirm.

The record indicates that these objections have merit. In the first place, the record now shows that the most serious potential for distortion and misconstruction of the Rule's required disclosures comes from oral contact, not written communication, since the latter is always available to evaluate and scrutinize. It is important that the school and its salespeople do not nullify the impact of the disclosures by artfully twisting their meaning,[295] or coming back into the home to resell the student, thus defeating the purpose of the affirmation requirement. We believe that the Commission should infringe as little as possible on the ability of the seller and buyer to communicate with each other and should impose only those restrictions on the time and manner of speech that are absolutely necessary to prevent unfair and deceptive acts and practices.[296]

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[291] See subparagraph (c)(1) of the Rule supra.

[292] See subparagraph (c)(3) of the Rule supra.

[293] See, e.g., comments of NATTS, p. 99, Exhibit K-520; comments of McGraw-Hill, p. 35, Exhibit K-900; testimony of T. Balls, Vice President, Nashville Auto-Diesel College, Tr. 7711; testimony of A. Fusco, Counsel, West Virginia Association of Independent Colleges and Schools, Tr. 8620.

[294] The proposed Rule, because of ambiguous drafting, was unclear as to whether only written or also oral contact was prohibited. A number of consumer groups and others pointed out that since written contact could be monitored more easily, it was oral contact that had a particular potential for abuse and should thus be prohibited. See comments of National Consumer Law Center, Exhibit K-373; testimony of P. Hynes, Chief of the Consumer Fraud Unit, U.S. Attorney's Office for the Southern District of New York, Tr. 1732.

[295] See discussion at Part I, Section V-C, supra.

Thus, we have rejected the originally proposed Rule's attempt to achieve complete isolation and recommend in its place a much less restrictive isolation concept. The Rule now provides that after the school's sales approach is over and the student has signed a contract, the seller may not _initiate oral_ contact. Thus, for example, the Rule restricts schools from sending the salespeople to the consumer's home after he has received the Disclosure Form to resell him and get him to affirm the contract on the spot. If the buyer requests assistance from the seller, and the seller wishes to respond by sending a salesperson to the consumer's home, the salesperson cannot attempt to nullify the impact of the Disclosure Form by making additional job or earnings claims, or discussing drop-out information.[297]

It is important to note those contacts that are not touched by the Rule. All forms of written contact are permitted, even if they are initiated by the school. If the buyer initiates contact, and such contact occurs at the school or anywhere else other than the buyer's own residence, the school can discuss anything it deems relevant. Thus if the student attends classes or just visits the school, the seller is in no way inhibited from discussing the Disclosure Form, or _anything else_ with the student. Even if the school responds to a student inquiry by sending a salesperson to the consumer's residence, the salesperson is free to discuss anything except the type of information on the Disclosure Form with the consumer. For example, the salesperson can discuss FISL and VA requirements and procedures, other financial problems, questions about the program, matriculation requirements and other starting procedures. Moreover, since the Rule does not prohibit any type of communication before the Disclosure Form is sent, the school has ample opportunity to discuss anything it wishes with the student even if it chooses to utilize door-to-door commissioned salespeople. In essence the Rule provides a system whereby the school and its salesperson can freely communicate with the buyer in a number of ways, both before and during the affirmation period. However, we have set limitations on attempts to resell the student and to negate the utility of the affirmation procedure, by restricting the extent to which the school can attempt to sell and resell a student who is reluctant to affirm his or her contract.

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[296] _See_ Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, ____ U.S. ____; 96 S. Ct. 1817 (1976).

[297] The Rule goes on to provide two provisions which should insure that schools will not attempt to resell the student once a student contacts the school. Paragraph (d)(4) makes any contract signed by virtue of a prohibited contact invalid, and requires return of all monies as if the contract had never been offered. Thus a school wishing to engage in prohibited contacts not only faces the prospect of having an unenforceable contract, but faces statutory penalties for failing to refund all monies within the time period specified. _See_ subparagraph (d)(3) of the Rule _supra_. We believe these constraints will encourage schools to avoid attempts to completely resell the consumer.

It is also important to note that it is not an independent violation of the Rule (with concomitant statutory penalties) if the school engages in prohibited time and place contacts. The only result is that the school cannot consider any ensuing affirmation as valid.[298] Thus the school's ability to communicate is never absolutely prohibited. If the school inadvertently or purposefully engages in prohibited contacts, it can correct that flaw by re-enrolling the student using the proper procedures.

One final change has been made to the proposed Rule's affirmation requirement. The Rule now prescribes that the enrollment contact include language to the effect that the contract is not binding until the seller has properly mailed a Disclosure Form to the buyer, the buyer has signed and returned that Form, and seller has not communicated with the buyer in ways restricted by the Rule.[299] This change, again made in response to public suggestion,[300] clarifies the fact that the enrollment contract is not a binding instrument and only becomes effective upon the buyer's affirmation. In addition, if the seller complies and includes these conditions in its contracts, individuals will have a defense in a private action if the seller violates the contract and tries to collect monies on improperly validated enrollments. This should ease the Commission's burden in enforcing compliance with the Rule by giving schools additional incentives to comply with the affirmation provisions.

Conclusion

In summary, we have concluded, based on the evidence in the record, that the Commission must adopt a format that ensures that the disclosure of material information is meaningfully made. The evidence also shows that the nature of the vocational school transaction and the atypical nature of the vocational school consumer calls for a remedy that does not bind the consumer to any contractual obligation until such time as he has purposively determined to do so. Finally, an affirmation period, unlike the more fragile cooling-off concept, is a remedy that will provide schools with appropriate incentives to cease engaging in numerous false, deceptive and unfair enrollment practices. Accordingly, we recommend the adoption of the reaffirmation remedy, as amended in this Report.

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[298] See subparagraph (d)4) of the Rule supra.

[299] See subparagraph (d)(5) of the Rule supra.

[300] See comments of National Consumer Law Center, Exhibit K-373.

E. Pro Rata Refund Enrollment Cancellation Policies

This section will be divided into two parts. The first will discuss the basis for the recommended Rule's pro rata refund policy. The other will detail the justification for a number of accompanying requirements--the method of disclosure of the refund policy , how the student cancels, when the school must make a refund, and how refunds for combination courses must be handled.

1. Pro Rata Refunds

The recommended Rule provides that schools may only retain a pro rata portion of a drop-out's tuition plus a registration fee of $25. This pro rata portion is determined in a straightforward manner. Once a student cancels his or her enrollment the school makes the following calculations. It generally counts the total number of lessons which have been submitted by a correspondence school student, or the classes or hours attended until a residence school student's effective cancellation. Since residence schools differ in type, two separate provisions are called for. For residence schools without fixed class schedules, the student only pays for the classes actually attended. For other residential schools, the student pays for classes actually attended or, under constructive cancellation provisions, those attended plus scheduled up to the effective date of the cancellation. This total is divided by the total number of lessons, classes or hours contained in the course. The resulting figure represents the percentage of the course the student is obligated for. The school then multiplies this percentage by the total contract price to determine the student's liability. The sum of this figure and a $25 registration fee represents the maximum total liability the student can have to the school. Of course the school can retain less if it wishes to, or if it is required to by some other standard or a contractual obligation to the student.

A refund policy of precisely this nature is required by no other federal or state law or regulation. The record demonstrates that a refund provision of this type is based on two separate grounds--each independently sufficient to justify its adoption. First, other refund policies that are harsher on non-completing students are unfair and deceptive. Second, a strict pro rata policy is necessary to prevent other unfair and deceptive practices. Both these grounds will be elaborated below, as will some general policy considerations also favoring a pro rata refund. Finally, arguments criticizing this provision will be discussed and analyzed.

(a) Existing Refund Policies are Unfair and Deceptive

Enrollment contracts that offer drop-outs little or no refund are unfair on their face, and substantially at odds with accepted common law principles regarding mitigation of damages and penalty clauses.

A fundamental principle of the common law of contracts is that the purpose of awarding damages is to compensate the non-breaching party in the event the contract has not been fully performed.[301] Damages are not intended either to penalize the breaching party or to compel his or her performance. The outer limit of recovery for a seller whose buyer breaches the contract will be seller's provable lost profit under the contract and any expenses directly incident to the services actually provided under the contract, minus any savings attributable to the breach.[302]

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[301] See 3 Williston, Contracts Section 1338; Farnsworth, "Legal Remedies for Breach of Contract", 70 Col. L. Rev. 1145 (1970); Fuller and Perdue, "The Reliance Interest in Contract Damages," 46 Yale L.J. 52 (1936), 46 Yale L.J. 373 (1937); MacNeil, "Power of Contract and Agreed Remedies," 47 Corn. L.Q. 495 (1962).

[302] Under the prevailing "expectancy" theory of damages, a seller whose buyer breaches can ordinarily sue to recover the benefit of his bargain. The seller's recovery is measured by the actual, unavoidable costs incurred in performing, plus any non-speculative profit he or she stood to gain. However, the common law also demands that the non-breaching party must avoid aggravating the damage caused by the breach, and must take all reasonable steps to mitigate losses. Once on notice that a breach has occurred, he also is no longer justified in incurring expenses in reliance on fulfillment of the contract. The seller must also satisfy the court that the damages flowing from the breach were reasonably expected. And finally, the seller bears the burden of persuasion as to the extent and certainty of actual losses stemming from the breach.

Under the common law, the seller is not only under a duty to mitigate the losses resulting from cancellation, but is also required to deduct any expenses and costs the cancellation has saved him. Phelps Dodge v. NLRB, 313 U.S. 177, 197-200 (1941); Nello L. Teer Co. v. Hollywood Golf Estates, Inc., 324 F.2d 669 (1963). The Uniform Commerical Code, Section 2-708(1) adopts this principle as applied to sales transactions.

(Continued)

Thus, schools' contentions that they should be able to retain the full or most of the contract price paid by non-completing enrollees flies in the face of settled law, except in the rare situation where a school can save virtually no expenses when a cancellation occurs, i.e., when out-of-pocket costs plus profit expectancy add up the face amount of the contract. Courts have routinely repudiated schools' pretensions to the full contract price from terminating students,[303] and even when a school has maintained that nothing less than the face amount will make it whole under the expectancy theory, most courts have demanded a rigorous showing that unavoidable outlay plus expected return do in fact add up to the initial contract price.[304]

Evidently in response to their failure to persuade the courts that they should be entitled to recover the face value of their contract, schools introduced a novel element into their contractual dealings by inserting stipulated damages provisions in their form contracts. Typically, such a clause provides that in the event of withdrawal from the school's program, the student forfeits a substantial portion of the entire contract

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[302] (Continued)

Although courts most often apply the expectancy measure of damages, the non-breaching party's recovery is sometimes based on damages to his or her reliance interest. Under this theory the non-breaching party is entitled to recover sums he or she has expended in relying on the breaching party's performance, but is not permitted to recover expected profits. Fuller and Perdue, supra n. 301, conclude that the reliance interest is often the preferable measure of damages in the modern context, since the dominance of the expectancy measure was predicated on an outdated model of a society where contracts are entered into between parties with relatively equal leverage who negotiate and reach a mutually acceptable agreement. The future services case law, discussed infra, may be read as a judicial retreat from expectancy doctrine in a setting where bargaining equality and negotiation over terms is generally absent.

[303] See, e.g., Vogue Models, Inc. v. Reine, 6 Ill. App. 3d 206, 285 N.E.2d 256 (1972); International Correspondence School, Inc. v. Crabtree, 162 Tenn. 70, 34 S.W.2d 447 (1931); Walton School of Commerce v. Stroud, 248 MIch. 84, 226 N.W. 883 (1929).

[304] See, e.g., Refrigeration and Air Conditioning Institute v. Rine, 75 N.E. 2d 473 (Ohio Ct. of App., 1946); Judo, Inc. v. Delaney, 42 Misc. 2d 504, 243 N.Y.S. 2d 386 (Civ. Ct. of City of N.Y., 1964). But see Trans-State Investment v. Deive, 262 A.2d 119 (D.C. Ct. of App., 1970).

price as liquidated damages. This clause is generally referred to as a "refund policy."

This expedient failed to make allowance for the courts' zeal in condemning the contractual damage provisions as "penalty clauses," and thus unenforceable. The penalty concept has been used extensively in courts to provide relief to the non-drafting party in situations where, as here, adhesion contracts have replaced arm's length bargaining, and the liquidated damage clause does not represent an honest and reasonable appraisal of what actual damages might be.[305] Applying this approach, courts called upon to adjudicate the validity of stipulated damage provisions in future services contracts almost uniformly have branded them them "penalty clauses."[306] For example, in one of these cases the court ruled that a contractual term permitting a computer school to retain an enrollment fee equaling 25 percent of the tuition, plus $7 per hour of instruction actually received, was unenforceable as a penalty.[307]

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[305] *See* Mente & Co. v. Fresno Compress & Warehouse Co., 113 Cal. App. 325, 298 P. 126 (1931); Muldoon v. Lynch, 66 Cal. 536, 6 P. 417 (1885); Wilson v. Dealy, 222 Tenn. 196, 434 S.W.2d 835 (1968).

[306] *See, e.g.*, Education Beneficial, Inc. v. Reynolds, 67 Misc. 2d 739, 324 N.Y.S.2d 813 (Civ. Ct. of City of N.Y., 1971); Parker v. Arthur Murray, Inc., 295 N.E. 2d 487 (Ill. App. Ct. 1973); Nu Dimensions Figure Salon v. Becerra, 340 N.Y.S. 2d 268 (Civ. Ct. of City of N.Y., 1973).

[307] *See* *Education Beneficial, Inc.*, note 306 *supra*.

The course consisted of 500 hours of instruction at a total price of $2,400. After 129 hours of instruction the student defendant dropped out due to pregnancy. Based on the liquidated damages provision, (i.e."refund policy") and crediting a sum already paid, the school sued for $740. In denying any recovery at all for the school, the court reasoned:

> Thus, a student who enrolls and pays the entire fee but attends no classes is nonetheless charged the entire $600.00 just as would a student who attended 80% of the scheduled instructional hours. It would appear, therefore, that there is no rational relationship between this "non-refundable enrollment fee" and any damage "Computer" might sustain as a result of an enrollee dropping out of the course. Thus, it is clear that this provision imposes a penalty and is not a valid liquidated damages provision. (324 N.Y.S.2d at 819).

In sum, courts have found cancellation and refund policies that offer little or no refund for or fail to reasonably estimate actual damages caused by non-completers to offend the common law on several counts. Schools cannot require the full contract price without the requisite showing of actual damages. Nor can they attempt to mask these deficiencies of proof behind stipulated damage provisions, which the courts have had no difficulty in exposing as penalty clauses, and striking down as such.

Whether because of such judicial hostility to these refund policies or because the schools themselves realized their unfairness, the refund policies of all major accrediting associations, many states, federal agencies, and most schools have been somewhat liberalized to allow students at least some kind of refund if they leave the course early enough.

Nevertheless, even these policies violate the judicial guidelines described above, and on their face demonstrate their unfairness. Obligations for early dropouts are clearly excessive; policies have arbitrary cut-off periods for calculating refunds; and most standards do not give the consumer any refund past the half-way mark.

Turning first to the excessive obligations of early dropouts, an individual who never starts a course can be obligated for up to a $100 registration fee (and more in some states).[308] Individuals often incur such obligations after signing forms at the insistence of persuasive door-to-door sales agents. They may not even realize they are legally obligating themselves to enroll in a course.[309] The impression that the student is not yet enrolled is fostered by a standard part of many sales presentations (described in sales manuals) which states that consumers are only applying for admission and that they are not yet accepted in the course.[310] Consumer confusion is increased by the numerous forms cluttering the sales transaction, including forms one must fill out in applying for a loan, or state or federal assistance. Thus, it is not surprising that often consumers do not realize that even if they do not start the course they have financially obligated themselves.

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[308] See Part I, Sections VI-B(1) and (2), supra.

[309] See testimony of B. Craig, Assistant Attorney General of Wisconsin, Tr. 7053; testimony of J. Vogel, Supervisory Collection Officer, USOE, HEW, Tr. 7758; see also complaint letters filed under Exhibit J-1.

[310] See Part I, Section V-C(2), supra.

This non-start phenomenon is a widespread problem. National Home Study Council Schools in a one-year period had 99,789 non-starts.[311] Twelve percent of the enrollees of the six largest correspondence schools did not start their courses.[312] All these students paid at least the minimum fee of $50. There is no evidence which demonstrates that non-starts' obligations under existing refund policies are related to the schools' expenses at this point. Often the non-start fee goes as a commission to the very salesperson who managed to enroll a student who never really wanted to enroll in the first place.[313]

Under existing policies, consumers who attend a few classes or submit a few correspondence lessons are even worse off than are non-starts. Their obligation can be substantial. Several specific examples will help to demonstrate this point. A student enrolls in a $2,000, nine-month computer programming course at a NATTS school, and drops out in the second week of the course because the equipment was outdated. Under the NATTS refund policy the student's financial obligation would amount to $600. A student who enrolled in a similar course at an NHSC school would have an obligation of $550 for submitting just one correspondence lesson. At a school accredited by the Cosmetology Accrediting Commission, a student who dropped out after the first day would have a financial obligation of $1,000. Likewise, a student attending a school employing the refund policy sanctioned by AICS would have an obligation of $1,000 upon dropping out after the third week.[314]

Unaccredited school refund policies can be even harsher. Using the same hypothetical facts, in Virginia and Nevada, an unaccredited school could keep $1,000 even if a student only attends the first day of classes. In New York, the obligation would be $900 if the student left in the second week. In Idaho, it would be $1,000. In six states there are no minimum refund standards at all.[315]

Existing policies are not only harsh, but arbitrary under the judicial precepts outlined above. Schools do not charge for actual expenses, but instead use broad categorizations in calculating students' refunds. Refunds are generally gauged by quarters so that students dropping out at any time during the period have the same obligation. For example, a student attending an NHSC member school who drops out after one percent of a course has the same obligation as a student who completes 24 percent of a course. If a student who has completed 24 percent of a course, and is obligated for 25 percent of the tuition, is receiving a fair and equitable refund, it is difficult to see how a student who submitted only one percent of the lessons, and yet is obligated for the same 25 percent of the tuition, is also receiving a fair refund.

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[311] See exhibits to testimony of J. Brown, President, NHSC, Exhibit L-131.

[312] See Part I, Section VI-A(2), supra.

[313] See Part I, Section V-B(4), supra.

[314] See Part I, Section VI-B(2), supra.

[315] See Part I, Section VI-B(1), supra.

The harshness of these standards and the arbitrariness of the standard cut-off points becomes particularly significant when one realizes how common it is for students to drop out very early in their courses. Not even considering non-starts, about one-third of the drop-outs in correspondence schools (and close to that percentage of enrollees) drop out during the first ten percent of the course. An HEW audit of an AICS school found 24 percent dropping out in the first five percent of the course and 35 percent dropping out prior to completion of ten percent of the course. Thus, treating early drop-outs (i.e., those who do not complete 10 percent of the course) the same as students who drop out after 24 percent of the course, results in severe financial losses for these numerous early drop-outs--who the school should often not have enrolled in the first place.[316]

If a student remains to just over the arbitrary 25-percent mark, his financial obligation can be almost the total tuition. In the $2,000 example, a student withdrawing at the 25 percent mark would owe $1,800 at an AICS school, $1,100 at a NATTS school, $1,050 at an NHSC school. After one month at a school accredited by the Cosmetology Accrediting Commission, the student would owe $1,500.[317]

Unaccredited schools in some states can retain even higher percentages of the total tuition. Schools in California and Nevada can keep all $2,000, in New York, $1,400, in Idaho and Virginia, $1,500. And, again, in a number of states there are no minimum policies.[318]

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[316] See Part I, Section VI-A(2), supra. In essence, large numbers of students drop out in the early part of the course and are obligated for a set portion of the contract price. No attempt is made to judge the actual costs associated with their tenure in the course.

[317] See Part I, Section VI-B(2), supra.

[318] See Part I, Section VI-B(1), supra.

Once the half-way mark is reached, all accrediting association standards and most state standards offer students no refunds at all. Thus, in the NATTS example above, a student can owe $1,100 or $2,000 depending on whether he or she dropped out one class short of the 50-percent mark, or one class after that mark. It thus would cost the student $900 to attend that one class.

In addition, policies that give no refund after the half-way mark can only be justified if schools cannot realize any cost savings at all once a student drops out. In the case of correspondence courses, cost savings can clearly be made since correspondence lessons are sent in packets and graded individually. If a student drops out at the midway point, the school does not have to send him, or grade, half of the lessons. In addition, where equipment is only offered the student late in the course, he receives more of the equipment. Similarly, in residential courses there are some cost savings if a student drops out at the half-way point. Most residential courses offer placement services. Others provide equipment and supplies. There are numerous other cost savings realized when students drop out midway, particularly since schools can generally predict and plan for such course attrition.[319]

Thus, existing refund policies have three fundamental defects. First, schools create excessive obligations for students who drop out early or do not start at all. These students--often vulnerable and unsophisticated--do not fully understand the import or magnitude of the obligation they are undertaking and sometimes do not even know they have been enrolled. Thus, schools are operating by extracting large amounts of money from the numerous early drop-outs--drop-outs often caused by the schools' own solicitation and enrollment abusive practices.

Secondly, the policies employ arbitrary cut-off periods for calculating refunds--for example, treating students who complete one percent or 24 percent of the course alike, and 49 percent or 50 percent of the course very differently. Besides being inequitable, this can lead to abuse as schools manipulate courses to take fullest advantage of the cut-off points.

Third, many existing policies offer no refund at all after the half-way point, even though there clearly are cost savings to the school. The student's obligation thus bears no relationship to the school's actual costs.

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[319] See e.g., student complaint letters filed under Exhibit J-1; National Home Study Council--Self-Evaluation Reports and Chairman's Letters, Exhibit F-64.

The fact that such policies may be unenforceable as penalty clauses is not sufficient protection to a student since most students will not go to court to request refunds or resist collection efforts.[320] The New York City Bar Committee on Consumer Affairs cogently described this phenomenon:

> ...few consumers who cancel such contracts ever obtain a trial. Many are overawed by contract language limiting cancellation rights and believe them binding even if a court would hold otherwise. Others give in to pressure or persuasion during the debt collection process. Still others lose in court by means of default judgments. The reasons for this have been explored by this Committee in other reports and include lack of legal representation, lack of service of process, and the difficulty of taking time off from work or hiring a babysitter to go to court, among other factors...
>
> We believe that legislation along the lines of S. 8749-A is needed to prevent loss of legal rights to mitigation of damages due to the fact that most consumers are unrepresented by counsel and do not know about these rights. Unless enforcable standards are laid down to police this area, sellers of future services will continue to collect sums which are not owed to them and which they could not successfully win in court if the consumers were knowledgeable and able to afford to contest.[321]

This discussion of common law precepts as applied to future service contracts is important because it highlights the fact that schools are not free to establish broad categories in their refund policies that do not reasonably estimate actual damages caused by a student's dropping out. On the contrary, it appears as if courts would freely strike down these clauses if the cases were brought before them. From the Commission's perspective, these judicial precedents offer insight into the type of refund policies that could be deemed unfair under Section 5 of the F.T.C Act. While the principles of contract law indicate which policies may be unenforceable, they cannot indicate which refund policy must be applied on an industry-wide basis. In order to establish such a policy the Commission must look to other policy considerations including the capacity of a pro rata policy to prevent unfair and deceptive practices.

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[320] See Part I, Section VIII-E, supra.

[321] See refunds on Future Service Contracts, The Special Committee on Consumer Affairs, The Record of the Association of New York, Vol. 30, No. 516 (May/June 1975), Exhibit I-56.

First, the vocational school transaction is a unique one requiring special safeguards. The consumer is purchasing an educational program that purports to provide occupational training. Thus, the consumer is buying both training and a potential career--presenting the consumer with one of the most significant decisions in his or her life. This decision would be a particularly difficult one to make, even if the consumer received accurate and complete product information.[322] The choice becomes more complicated when the individual is confronted by a barrage of advertising claims and sharp sales practices. But his alternative sources of information are often limited or non-existent.[323]

Second, this decision is complicated by the future service nature of the vocational school contract since the consumer is unable to determine in advance the adequacy of the service which will be rendered or the veracity of the representations which have been made as an inducement to enter into the agreement. Vocational school consumers cannot measure until well into the course the accuracy of claims concerning the adequacy of the training offered, its value in attaining vocational objectives; the adequacy of the school's placement services; the school's placement success; the sufficiency of its facilities, equipment, faculty and teaching methods; and its employer contacts.[324]

Third, the vocational school enrollment decision is a one-time purchase. The consumer, if dissatisfied, cannot make a different decision the next time--there is no next time. The damages involved in a wrong decision can be substantial.[325] Tuitions that can run into the thousands are a significant expenditure, particularly for the unemployed or under-employed. When this is combined with the time and psychological investment, the consumer injury is even more pronounced. Thus, if a consumer enrolls in a vocational school course but drops out because the course is not as represented or even is forced to leave for personal reasons, this can have a severe effect on his or her future career. If the consumer receives little or no refund, the wasting of the tuition combined with the personal and time commitment may discourage the consumer from attempting other educational or occupational avenues. The widespread scope of this consumer injury can be seen in the high industry-wide drop-out rates and low industry-wide placement rates.[326]

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[322] See Part I, Section VII-B, supra.

[323] See Part I Sections III-G, VI-A(4), VII-B, supra.

[324] See Part I, Section IV-C, supra.

[325] See Part I, Section II-B(4), supra.

Fourth, the burden of choice is aggravated by the unsophisticated and vulnerable nature of many vocational school consumers. The typical consumer is often young, with limited educational and work experience, often unemployed or marginally employed.[327] This person is particularly vulnerable to the advertising and door-to-door sales technique utilized in the industry. Such an individual requires remedies which will allow him or her to avoid being tied to a long-term contract where completing a minimal amount of the course can create a liability for most of the often sizeable tuition.

Not only do existing refund policies lead to improper incentives for a school's enrollment policy, but they lead to other manipulations by schools. Schools can structure their course material and motivational work to attempt to keep students enrolled long enough to cross over any arbitrary cut-off points. If a student's refund is markedly different depending on whether he or she drops out before or after the one-week mark, the school may employ any of a number of techniques to keep the student enrolled until his financial obligation is greater. The student may remain in the course waiting for the promised TV set or other equipment. Once the half-way mark is reached, the school can provide more difficult materials with no fear of loss even if the student drops out. Similarly, a correspondence school salesperson, by helping a student complete a lesson at the same time he signs up the student in the course, and then sending the lesson in for the student, might increase a student's obligation (and consequently the salesperson's commission) from just a registration fee to one-quarter of the contract price, plus the same registration fee. Particularly with the use of a "sample lesson"--when the student does not realize he has enrolled in the course--an actual non-start can be turned into a student with a sizeable obligation. Since many students do not understand existing refund policies, they do not understand how schools are manipulating the course to take the fullest advantage of the refund policy.

The unfairness to this vulnerable consumer is compounded by another fact. Retention of large portions of the contract price by the seller places the burden of erroneous enrollment practices on the person least capable of doing anything to correct them. It is the seller who knows the nature of the course, the drop-out rate, the prospective job market, and the qualifications necessary to succeed in the course. Under present refund policies the salesperson has no incentive to pass that information on to the consumer to help the consumer avoid an error in judgment--i.e., the seller has no incentive to screen properly. On the contrary, having induced a prospective student to a sales interview, the school has every incentive to announce grandly that the prospect's aptitudes are ideally suited to the school's offerings. In effect, under existing refund policies the school has every incentive to ignore what one would expect to be in its economic interest under normal circumstances--to screen potential students and warn away ill-suited applicants so that the school can direct its resources to those ready and able to be trained and placed in course-related jobs.

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[326] See Part I, Sections VI-A(1) and VII-D, supra.

[327] See Part I Sections III-B, C, D, and H, supra.

Another unique feature of vocational school refund policies arises when they cover students utilizing veterans' benefits. Veterans' benefits are paid only for classes attended or lessons submitted. Existing refund policies are not similarly based, but obligate students for large percentages of the tuition even if they attend only a small proportion of the classes. Thus veterans under many of these policies could find themselves in the anomalous situation of paying more of their own money the fewer the classes they attend.[328]

One early General Accounting Office study found that veterans attending home study schools found themselves obligated for $24 million for uncompleted lessons when they thought their veterans' benefits would pay for everything.[329] One would predict that this figure is significantly higher now. This problem is particularly significant because schools do not inform veterans of this potential for personal liability.[330] For these reasons, among others, the Veterans' Administration has publicly supported the concept of a pro rata refund:

> The pro rata refund provisions would act to protect the veteran against incurring large liability while allowing schools a reasonable fee for their educational services to students. Many veterans sign contracts for these programs, and upon initiating the training find for diverse reasons they are unable to complete the program. Since the Veterans' Administration education assistance is paid only on the basis of the lessons completed and serviced, the

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[328] See Part I, Sections VI-B(3) and C, supra.

[329] See GAO Report, "Most Veterans Not Completing Correspondence Courses-More Guidance Needed From Veterans Administration", B-114859 (March 22, 1972), p. 11, Exhibit H-10.

[330] See Part I, Sections IV-C(4) and VI-C, supra.

veteran is responsible under the terms of the contract and this has placed many veterans in debt.[331]

Similarly, many non-veteran students are surprised by their refund obligations. Schools do not adequately explain to prospective students their refund policy. When salespeople do describe it, they often misrepresent its terms. Even without such explicit misrepresentations, consumers tend to think that they are only obligated for those lessons they submit or classes they attend. The concept that they owe large sums of money for a course they only attended briefly can be bewildering to consumers.[332]

All of the considerations above lead staff to conclude that for a refund policy to avoid being unfair and deceptive, it must be a strict pro rata policy. Other standards are overly stringent to non-starters and early drop-outs, arbitrary in their treatment of later drop-outs, and unjustifiable in their treatment of students who drop out in the second half of the course, or otherwise receive no refund.

Moreover, the vocational school transaction, by its involvement with a critical and difficult educational and career choice that requires vulnerable consumers to enter into a costly and one-time future services contract, is a unique consumer purchase that requires special safeguards. Instead existing non-pro rata refund policies shift the burden of the decision to the party least able to correct market dysfunctions and encourage schools' ordinary refund policies. In addition, only a pro rata refund can provide reasonable treatment to veterans and prevent them from incurring unanticipated debts. Finally, only a pro rata refund can meet students' expectations as to what kind of financial obligations they are incurring upon enrollment.

Thus, it is not surprising that a growing number of legislatures, agencies, reports, and commentators have been adopting or advocating a pro rata refund standard. The United States Congress has required that veterans attending unaccredited residential schools must receive a strict pro rata refund.[333] The United States Office of Education requires unaccredited schools participating in the GSLP to provide their students with pro rata refunds.[334] While neither of these standards covers accredited schools, staff does not believe that a special exception should be granted to the very accredited schools that have created so many of the consumer protection problems recounted in this Report.[335]

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[331] See Educational Benefits Available for Returning Vietnam Era Veterans, Hearings Before the Subcommittee on Readjustment Education and Employment Committee on Veterans Affairs, Part I, p. 424, Exhibit A-14.

[332] See Part I, Sections IV C-(4) and VI-B(4), supra.

[333] See Part I, Section VI-B(3), supra.

The Federal Trade Commission's 1972 Proposed Statement of Enforcement Policy for vocational school refunds, growing out of the hearings on the proposed Guides, calls for a pro rata refund.[336]

A House Report from the Committee on Government Operations, "Reducing Abuses in Proprietary Vocational Education," criticizes existing national accrediting association refund policies as inequitable and supports a pro rata refund.[337] The Commissioner of Education has recommended to Congress that a pro rata refund be made a statutory prerequisite to participation in Federal educational programs:

> (I)t appears that most student withdrawals and dropouts occur in the first half of post-secondary education programs. Therefore, consistent with the obligation to protect the interest of all parties concerned--students, lenders, participating schools and the financial interest and liabilities of the Federal Government--it is necessary to establish a pro rata refund policy.[338]

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[334] See Part I, Section VI-B(3), supra.

[335] See Part I, Section VIII-D, supra, and Part II, Section V, infra.

[336] See Part I Section VI-B(3), supra. This enforcement statement differs from the recommended Rule in two ways. The registration fee, instead of $25, is five percent of the tuition or $50, whichever is less. The enforcement statement thus has a smaller registration fee than the recommended Rule for some courses, and larger for others. The enforcement policy also allows schools to keep the fair market value of equipment not returned in suitable condition for resale. See discussion of this issue in text at note 394, infra.

[337] See "Reducing Abuses in Proprietary Vocational Education," Twenty-seventh Report by the Committee on Government Operations, H.R., 93-1649 (December 30, 1974), Exhibit H-168.

[338] See "Proposal for Additional Legislative Requirements Relative to the Determination and Termination of Institutional Eligibility for Funding Status," HEW/USOE (July 30, 1971), p. 2, Exhibit F-20. USOE has also stated in its policy paper (Continued)

Also at the federal level, the Veterans' Administration,[339] the Senate Committee on Veterans' Affairs,[340] a number of senators

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[338] (Continued)

"Federal Tuition Refund Requirement:"

> The tuition refund issue is of prime strategic importance to the Office if it is to protect both Federal and student interests. This is so because a student-oriented (as opposed to an institution-oriented) tuition refund policy has the natural effect of compelling a school to be more judicious regarding its advertisement-recruitment-admissions activities and to exert more effort in attempting to retain students once they are enrolled. In essence, the imposition by USOE of an eligibility requirement to the effect that institutions participating in student assistance programs must apply a specified (student-oriented) tuition refund model to all students enrolled under these programs would significantly lessen current temptations which lead to unethical practices by schools and abuse of FISL and other funding programs.

AIE Staff Paper (August 30, 1973), Exhibit F-20.

[339] As the Veterans' Administration stated in its testimony before the Senate Committee on Veterans' Affairs:

> The pro rata refund provisions would act to protect the veteran against incurring large liability while allowing schools a reasonable fee for their educational services to students. Many veterans sign contracts for these programs, and upon initiating the training find for diverse reasons they are unable to complete the program. Since the Veterans' Administration education assistance is paid only on the basis of the lessons completed and serviced, the veteran is responsible under the terms of the contract and this has placed many veterans in debt.

Educational Benefits Available for Returning Vietnam Era Veterans, Hearings before the Subcommittee on Readjustment, Education and Employment, Committee on Veterans Affairs, Part I, p. 424, Exhibit A-14.

[340] The Senate Commmittee on Veterans' Affairs agreed that some refund policy more equitable than those employed by the

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and representatives,[341] the Federal Interagency Committee on Education,[342] and others[343] have endorsed the concept of a pro rata refund either as a prerequisite for institutional eligibility for federal funds or as a requirement for all schools.

At the state level, a number of agencies and legislatures are also adopting pro rata refunds. The Wisconsin Educational Board has detailed the justification for its pro rata policy thus:

> The purchase of educational opportunity to learn through any course of study is different from any other kind of purchase because of the number of intangibles and unknowns involved in education. As a result, it is common that students make numerous "false starts" in their educational programs. These starts are to some degree minimized through good counseling. It is important, however, to preserve for the student the right to change his mind (recognize a false start) without too serious a penalty since this action itself may be important in the student's growth, maturation and learning.[344]

The Massachusetts legislature has adopted a strict pro rata refund standard for all types of proprietary schools, closely tracking that of the recommended Rule.[345] A number of other

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[340] (Continued)

industry was necessary to prevent financial losses to veterans. Report of the Senate Committee on Veterans' Affairs to Accompany S. 2161, Report No. 92-988 (July 26, 1972), pp. 51-55, Exhibit B-4.

[341] *See* testimony of Sen. Edward Brooke, Tr. 6; comments of Sen. Edward Kennedy, Exhibit K-250; testimony of Sen. Vance Hartke, Tr. 1897; comments of Rep. Henry Helstoski, Exhibit K-498.

[342] *See* Toward a Federal Strategy for Protection of the Consumer of Education, FICE (July 1975), Exhibit H-170.

[343] *See* *Private Accreditation and Public Eligibility*, Brookings Institute (February 1975), Exhibit D-21. *See also* USOE's endorsement of pro rata at "Proposals for Additional Legislative Requirements Relative to the Determination and Termination of Institutional Eligibility," Exhibit F-20.

[344] *See* Statement of Philosophy and Principles, Wisconsin Educational Board, EAB 7.01(2)(a), 1972.

[345] *See* Part I, Section VI-B(1), *supra*.

states' policies go beyond those of the accrediting associations and track to some extent the recommended Rule's strict pro rata.[346] The New York Legislature in its most recent session adopted a pro rata refund standard for out-of-state correspondence schools.[347]

In addition, a number of state attorneys general in states not requiring pro rata refunds have, nevertheless, urged the Commission to adopt pro rata.[348]

Some states, while not imposing a strict pro rata refund, have legislation that serves many of the same purposes. Examples of this are requirements that schools make a full refund if misrepresentations are made to students or if students are not qualified to take the course.[349] Similarly, some state legislation provides that students incur little or no obligation early in the course so that they see, at least to some extent, what they are getting into.[350] The Arizona Board of Private Technical and Business Schools makes a case-by-case refund award, generally a straight pro rata refund.[351] While these just mentioned alternatives serve some of the same purposes as a strict pro rata, staff does not recommend the Commission adopt them in large part because of enforceability. Making a full refund when a student has been subjected to misrepresentations or is unqualified to enroll in a course could involve the Commission in hundreds of thousands of individual determinations--as, of course, would Arizona's approach. Allowing students to shop around early in the course with no financial obligation could lead schools to make sure students stayed in long enough to incur sizeable obligations.

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[346] See, e.g., at Part I, Section VI-B(1), supra. The state refund standards for Minnesota, Nebraska, Indiana, Alabama, the District of Columbia, Hawaii, New Mexico, and South Dakota.

[347] See L. 1976, Ch. 535.

[348] See comments of F. Kelley, Attorney General, Michigan, Exhibit K-433; comments of R. Small, Deputy Attorney General, Delaware, Exhibit K-593; testimony of S. Mindell, Assistant Attorney General, New York, Tr. 932; testimony of L. Winarski, Assistant Attorney General, Ohio, Tr. 8540.

[349] See Part I, Section VI-B(1), supra; see also testimony of Sen. J. Hughes, Tr. 8584.

[350] Delaware gives a 95-percent refund during a 30-day grace period; Idaho obligates the student only for $50 during the first week. See Exhibit G-1.

[351] See Part I, Section VI-B(1), supra.

Finally, other members of the public also support the concept.[352] Of course, numerous others--particularly industry members and some state regulators --oppose the Rule's pro rata and instead endorse existing standards.[353]

In summary, an impressive array of public officials and experts argue for the adoption of a pro rata refund. They do so for many of the same reasons outlined previously--the vulnerability of the vocational school consumer, the importance of the choice to be made,the future service nature of the contract, and the absence of adequate regulatory alternatives. These policy considerations complement the previous judicial determination that existing refund policies may not even pass muster under the common law.

(b) Pro Rata Necessary to Prevent Unfair and Deceptive Practices

The Rule's pro rata requirement, in addition to defining what refund policies are unfair and deceptive, is also recommended because it is required to address many of the widespread misrepresentations and sales abuses shown to exist in this industry. The Commission must prevent the continued occurrence of such practices and staff recommends a pro rata refund as the most effective and efficient way to do so.

The pro rata requirement is the only provision of the Rule to deal with many of these abuses. The Rule's advertising section solely requires certain affirmative disclosures about placement to accompany job and earnings claims. The disclosure section similarly only prescribes that schools release certain information about placement rates if the school makes job or earning claims, and in any event, about drop-out rates. The requirements for a new course are even more limited. The affirmation section allows consumers to consider these disclosures, and reconsider their enrollment decision. These provisions are absolutely necessary for reasons related wholly to those particular attributes of the enrollment process.[354] None of these remedies is capable, however, of preventing many of the other unfair and deceptive practices prevalent in this industry. Staff recommends that the Commission remedy such practices by adopting a pro rata refund.

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[352] See, e.g., testimony of J. Faulkner, New Haven Legal Assistance Association, Tr. 1379; testimony of D. Cherot, Executive Director, Newark Office of Consumer Action, Tr. 1445; testimony of G. Boros, former salesman, Cleveland Institute of Electronics, Tr. 1471; testimony of W. Randolph, former salesman, ITT, Weaver, Lafayette Academy, Tr. 450; testimony of P. Gitlin, Executive Secretary, Massachusetts Consumer Council, Tr. 289; testimony of D. Rothschild, Professor, George Washington University Law School, Tr. 2130; testimony of S. Newman, New York University Law School, Tr. 1505.

[353] See, e.g., Part I, Section VI-C, supra; comments of NATTS, Exhibit K-520; comments of NHSC, Exhibit K-439; comments of Bell & Howell, Exhibit K-856; comments of Association of State Administrators and Supervisors of Private Schools, Exhibit K-784; statement from Katherine Gibbs Schools and LaSalle Extension (Continued)

The pro rata refund provision prevents consumer injury arising out of such practices in two ways. First, it discourages schools from using unfair and deceptive practices by removing much of the financial incentive to utilize them. Second, even if schools continue to use them, the refund provision allows students to withdraw from the school without incurring large economic losses--thus providing something like a continuing cooling-off period during which the student can evaluate the future service commodity he or she has purchased.

The three general unfair and deceptive practices pro rata refunds will discourage are random recruitment of unqualified applicants, various forms of pre-enrollment misrepresentations, and unfair sales techniques applied most often by commissioned sales agents. Many schools have been unfairly enrolling numerous students not qualified to benefit from the course or to obtain employment in jobs for which the course is designed to prepare them. This sales philosophy results in remarkably high drop-out rates, particularly early in the course.[355] Existing refund policies allow schools to operate profitably using these enrollment practices, even with these high drop-out rates.

The result is that many schools adopt a sales approach that leads to the enrollment of almost every consumer contacted. Schools insure that their salespeople follow this approach

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[353] (Continued)

University, Exhibit K-237; comments of M-W Corp., Exhibit K-863; comments of Control Data Corp., Exhibit K-862; testimony of B. Ehrlich, legal counsel to NHSC and NATTS, Tr. 9272; testimony of W. Goddard, Executive Director, NATTS, Tr. 9166; testimony of R. Fulton, Executive Director and General Counsel of AICS, Tr. 8980; testimony of W. Fowler, Executive Director, NHSC, Tr. 9049; testimony of W. O"Brien, Northeast Regional Vice-President, National Association of State Administrators and Supervisors of Private Schools, Tr. 238; testimony of R. Thompson, former student of ITT Technical Institute, Tr. 888; testimony of F. Albanese, Executive Secretary of the Ohio State Board of School and College Registration, Tr. 6666.

[354] See Part II, Section IV-B, C and D, supra.

[355] See Part I, Sections VI-A(1) and (2), supra.

by the way they compensate and control their salespeople. A commissioned salesperson, under present policies, is always financially better off enrolling, than not enrolling, a consumer. Moreover, schools--except for certain very minimal standards which are often not enforced--continually encourage enrollments and do not discourage the signing of unqualified students.[356] The negative sell, with its use of "qualifications" tests and claims of selectivity, is designed not to screen out but to sweep in as many enrollees as possible.[357]

This policy of random recruitment is not surprising considering the refund policies now in force. It is always in a school's interest to enroll someone instead of turning him or her down. Once a school has committed itself to a certain level of sales and advertising expenses, if it can extract a large portion of the tuition from a consumer, whether the consumer completes or not, there is no financial disincentive to put him under contract no matter how unqualified. This situation--where the emphasis is on contract signing rather than product performance--is clearly an aberration from what competitive market theory would suggest. Under market precepts, schools should actively pursue only those who will tend to complete and be placed, thereby enhancing the school's reputation and its ability to attract new customers.[358] That is not the case in this industry.

A pro rata refund will limit the profitability schools presently enjoy in enrolling students not capable of completing their courses, or unqualified to obtain the jobs the course purports to train them for. For example, under existing policies, if an unqualified student, after sending in one of the lessons in a 100-lesson, $2000-correspondence course, found that he was incapable of handling the materials, the school would receive $550. Under the policy prescribed in the Rule, the school would retain $45, a figure less likely to reward the school for enrolling this unqualified student.

The pro rata refund policy is also necessary to prevent widespread misrepresentation by schools in the enrollment process. Numerous misrepresentations that induce consumers to enroll are not dealt with directly by other of the Rule's provisions--misrepresentations about equipment and facilities,[359] instruction and instructors,[360] availability of part-time employment while in school,[361] the refund policy and other financial aspects of the course,[362] enrollment deadlines,[363] selectivity of admission,[364] accreditation and government approval,[365] cooling-off period rights,[366] the cost of the course and other misrepresentations,[367] and the salesperson's status.[368] Moreover, while placement, salary, and drop-out disclosures that provide students with material information necessary to their purchase decisions also can put misrepresentations about jobs, earnings, and drop-out rates in a clearer perspective, they cannot completely prevent students from being misled by all the ingenious and varied misrepresentations in this area, particularly when conveyed by sophisticated commissioned salespeople.[369] We believe such misrepresentations--both job and non-job related--are so numerous, widespread, and varied,[370] that the most effective and practical way to combat them is with a pro rata refund that reduces the rewards associated with their use.

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[356] See Part I, Section V-B, supra.

[357] See Part I, Section V-C(2), supra.

[358] See W. Wilms, The Effectiveness of Public and Proprietary Occupational Training (October 31, 1974), Exhibit C-110; testimony of W. Wilms, Center for Higher Education, University of California, Tr. 3195; A. Belitsky, Private Vocational Schools: Their Emerging Role in Post-Secondary Education (June 1970), Exhibit A-8; comments of NATTS, Exhibit K-520.

Direct prohibitions of such varied misrepresentations would have to be general and somewhat vague. If such a laundry list of prohibited misrepresentations were drafted, enforcement of the Rule would require the expenditure of herculean energies by the Commission involving it in thousands of individual enforcement actions in an attempt to define and apply the prohibited claims.

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[359] See Part I, Section IV-C(1), supra.

[360] See Part I, Section IV-C(2), supra.

[361] See Part I, Section IV-C(3), supra.

[362] See Part I, Section IV-C(4), supra.

[363] See Part I, Section IV-C(6), supra.

[364] See Part I, Section IV-C(7), supra.

[365] See Part I, Section IV-C(8), supra.

[366] See Part I, Section IV-C(9), supra.

[367] See Part I, Section IV-C(10), supra.

[368] See Part I, Section V-C(2), supra.

[369] See Part I, Sections IV-B(1) and (2), and C(5), supra.

[370] See Part I, Section IV-D, supra.

The pro rata refund requirement, instead of attacking the misrepresentations directly, removes some of the financial incentive behind them. As in enrolling unqualified applicants, schools, under existing refund policies, stand to benefit from enrollment misrepresentations even if the student, upon realizing he was deceived, drops out. The record shows that many of the grounds for students' dropping out are directly attributable to the school.[371]

Even though a school knows that misrepresentations in the enrollment process will lead to numerous drop-outs, some schools will continue to enroll students through such misrepresentation because they can still make money from such drop-outs. The pro rata refund, by taking away some of this profit by allowing schools to retain a smaller portion of the tuition, will induce schools to more adequately control their salespeople's misrepresentations, and reduce misrepresentations in their advertising.

Similarly, the pro rata refund is the only provision in the Rule that can begin to deal effectively with the high pressure sales tactics, such as the negative sell, utilized by commissioned salespeople.[372] Beyond the actual misrepresentations about courses that abound in such sales presentations, the sales tactics themselves are unfair and deceptive.[373] These tactics effectively allow salespeople to intimidate consumers into signing costly long-term contracts that supposedly will train the consumer so he or she can embark on a new career. Considering the way students get into such contracts it is not surprising that students often change their minds and decide to drop out.

While some might argue that the only way to prevent such practices is to proscribe across the board the use of commissioned salesmen in the sale of vocational school courses, the Rule takes a more moderate approach. It is hoped that a pro rata refund will reduce the financial incentive schools presently have to utilize unfair and deceptive sales tactics that succeed in signing up students even if the students are not motivated to pursue the course until completion.

The affirmation requirement, particularly as amended in the recommended Rule, cannot act as a total deterrent to such sales practices. Staff does believe that the refund and affirmation provisions working hand-in-hand can go a long way in preventing such practices.

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[371] See Part I, Section VI-A(3), supra.

[372] See Part I, Section V-B, supra.

[373] See Part I, Sections V-C(1), (2) and (3), supra.

Even when a pro rata refund policy does not discourage the recruitment of unqualified applicants, the dissemination of misrepresentations, or the utilization of unfair and deceptive sales techniques, it still allows victimized consumers to withdraw from the sales transaction with a minimum of injury. In effect, the Rule provides a continuing cooling-off period. Often a pre-enrollment period is inadequate to allow a student to find out what he or she is getting into, since only attendance in the course can reveal certain deceptions and the actual substance of the course material. When students discover that they are unsuited to the course or the course is unsuited to their needs, they should be able to withdraw, no matter how far into the course, without being unreasonably penalized.

For some schools, as many as half of all enrollees drop out in the first fifth of the course.[374] Under existing policies these students, whether they where enrolled by virtue of deceptions or not, are still obligated for a large part of the tuition. Moreover, the very harshness of the refund policy discourages others, who were also victimized, from dropping out. By the halfway point under virtually all existing policies, there is no point in dropping out because there is no refund at all. We believe a refund policy must allow students to drop out with a minumum of undue hardship whenever they find a course was not as represented or inappropriate to their ability.

A pro rata policy will also prevent another abuse common in the proprietary vocational school industry which involves the use of federal money to assist a student's enrollment. The federal government and the taxpayers, not students, are the ultimate victims of this abuse. Particularly in relation to the FISL program, the evidence strongly suggests that inadequate refunds under the present policies are a prime reason for students defaulting on their loan repayments. One study conducted by the Brookings Institute concluded that:

> Tuition refund policy appears to be a key link between high drop-out and high default rates. A borrower who drops out of school is contractually obliged to repay his entire loan within 9-12 months. Failing to obtain what he deems to be an adequate or timely refund of his tuition, he may be unable or unwilling to do so.[375]

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[374] *See* Part I, Section VI-A(2), *supra*.

[375] *See* H. Orlans, *et al.*, "Private Accreditation and Public Eligibility (February 1974), p. 404, Exhibit D-21.

Studies conducted by HEW itself have confirmed these findings by verifying that the high default rates at some schools are in part attributable to the schools' failure to make adequate refunds.[376] The result is that the government must fill the void left by the student's default, and reimburse the school on the loan, with the taxpayer eventually paying for the school's harsh refund policy.

Thus, for a number of reasons--creating disincentives for random recruitment, misrepresentations, and unfair sales tactics; preventing student defaults on federally-insured student loans; and minimizing consumer (and taxpayer) injury by allowing victimized students to drop out with a lessened financial loss--the pro rata provision is a necessary requirement to prevent unfair and deceptive practices. The Commission has ample authority to adopt a pro rata provision to remedy these practices.[377]

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[376] See Status of Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program, USOE, DHEW, Region IV, 1975, Exhibit H-201; Visitation Report, LTV Schools, HEW-AICS, undated, Exhibit B-77; Review of Files of Students at Marsh-Draughon School, HEW, Region IV (May 24, 1974), Exhibit H-192; Audit Report of Alverson-Draughon Business College, HEW, Region IV (December 31, 1974), Exhibit H-193.

[377] The Fifth Circuit has affirmed a Commission order in Arthur Murray Studio of Washington, Inc., that limited consumers' contractual obligations to a seller to $1500, 78 F.T.C. 434 (1971) aff'd, 458 F.2d 622 (5th Cir. 1972). The Commission had found "intense, emotional and unrelenting sales pressure to persuade a prospect or student to sign a long-term contract and that such a person is insistently urged, cajoled, and coerced to sign such a contract hurriedly and precipitatedly through use of persistent and emotionally forceful sales presentations which are often of several hours' duration." Id. at 439. Commissioner Dixon justified the remedy of limiting the contractual obligation:

> The greater the gains or rewards respondents will reap, the greater their incentive will be to engage in these practices or to devise more elaborate methods to accomplish the desired end.

Even more restrictive remedies were ordered in Windsor Distributing Co. 77 F.T.C. 204 (1970) aff'd, 437 F.2d 443 (3rd Cir. 1971) and Universal Electronics Corp. 78 F.T.C. 265 (1971). Based on findings of widespread deception and sales abuse, the Commission ordered a number of limitations on the binding effect of sales contracts for vending machines. The (Continued)

(c) Policy Considerations

A pro rata refund is grounded on record evidence that demonstrates that not only are other policies unfair and deceptive, but also that pro rata is necessary to prevent widespread unfair and deceptive practices. The provision is also justified by a number of other public policy considerations which the Commission must evaluate in rendering its judgment on this remedy.

First, there are important advantages to the recommended Rule's prescribing one specific refund policy. The Commission's defining with specificity what are unfair and deceptive refund policies by mandating one uniform standard will enable sellers to comply with the Rule without fear of conflicting interpretations. Straight pro rata, unlike other refund policies, is specific, simple, and clearcut. There are no special exceptions or categories. Evasion and manipulation are minimized. Compliance and enforcement are eased.

Second, this one specific policy will lead to uniformity and resulting savings by sellers, consumers, and regulators. Presently, schools, particularly those operating in a number of states, must comply with a maze of minimum refund standards from various state, federal, and private accrediting agencies. While schools presently could adopt the most liberal policy or the most liberal components of all the policies and thus comply with all the various agency standards, many schools for competitive or other reasons presently do not do so. Similarly, student confusion will be decreased, and government enforcement will be eased, if schools have a standard refund policy.

Third, a uniform pro rata refund policy is also clearly feasible. Many diverse schools are presently utilizing a pro rata policy with no ill effects. Unaccredited residential schools that enroll students utilizing veterans' benefits--about 3500

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377 (Continued)

Commission ordered that contracts not be binding until the vending machines have been installed to the customers' satisfaction, and the customers have affirmed this fact in writing. Moreover, if the customer could demonstrate a violation of the F.T.C. order in the seller's contract, solicitations, or performance, the customer may rescind and receive a full refund. The Windsor case was appealed to the Third Circuit, which affirmed per curiam, noting "the order is well within the area of Commission discretion in framing relief appropriate to termination of the unfair practices found to exist." 437 F.2d 443 (3rd Cir. 1971) at 444.

schools--must offer the veterans a pro rata refund.[378] So must 500 unaccredited schools participating in the GSLP.[379] All schools in Massachusetts must offer a strict pro rata refund. Schools in Wisconsin, Minnesota, Nebraska, Indiana, Alabama, Washington, D.C., Hawaii, New Mexico and South Dakota operate under a modified pro rata policy.[380] Out-of-state correspondence schools operating in New York, must now also provide a pro rata refund.[381] In addition, a large number of schools of various types already offer a pro rata policy voluntarily, either because they think it advantageous or fair.[382]

There is no evidence on the record indicating that any schools operating in these jurisdictions are encountering significant problems with these more liberalized refund policies.[383] If fact, accrediting agencies have in the last five years softened their own policies with no adverse consequences to their members.[384]

Industry representatives have argued that changing existing refund policies will shift the cost of courses from dropouts to graduates by a resulting increase in tuition.[385] This argument misses a number of important points. If schools could increase tuitions without hurting overall profits, they would have done so already. Schools will only be able to raise tuitions in two situations. If consumers see the changed refund policy as having sufficient value so that they will be willing to purchase the course at the higher price, schools could raise tuitions. In that case, the tuition increase will not injure enrollees because they will be willing to pay for the more liberal refund policy, since it would act as an insurance policy in case they had to drop out for unforeseen reasons--misrepresentations during enrollment, lack of qualifications, or unanticipated personal problems.

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[378] See Part I, Section VI-B(3), supra.

[379] See Part I, Section VI-B(3), supra.

[380] See Part I, Section VI-B(1), supra.

[381] See New York State Legislature, L-1976, Ch. 535.

[382] See Part I, Section VI-B(3), supra.

[383] See, e.g., testimony of D. Stucki, Executive Secretary, Wisconsin Educational Approval Board, Tr. 8522.

[384] See, Hearings Before the Subcommittee on Readjudment, Education, and Employment, Committee on Veterans Affairs, U.S. Senate, 1972, Exhbit H-6. It is interesting to note that these changes in policies were justified solely on grounds of providing greater equity to students--the same rationale for the previous policies. No mention was made of the need to produce massive amounts of detailed economic data.

[385] See, comments of NATTS, pp. 3 and 106, Exhibit K-520; comments of NHSC, p. 133, Exhibit K-439; comments of M-W Corp., p. 24, Exhibit K-863; testimony of S. Ritman, Medical Director, Gradwohl School of Laboratory Technique, Inc., Tr. 6796; testimony of H. Herzing, President, Wisconsin Council for Independent Education, Tr. 8451.

The other way schools could be in a position to raise tuitions is if they are presently using drop-outs to subsidize graduates. That is, with existing harsh refund policies, schools might find it more profitable to attract large numbers of students with artificially low prices and then extract excessive profits from numerous early drop-outs. These extra monies are used to subsidize the continued enrollment of those who ultimately graduate and result in allowing those graduates to receive their training at a reduced price. Using some of the statistics previously set out in this Report[386], it can be readily seen that a large number of students drop out before 10 percent of the course is completed but are obligated for 25 percent of their tuition, leaving the difference between services rendered and tuition paid to be used to subsidize students who remain in the course. Under a strict pro rata policy if schools are discouraged from enrolling large numbers of unqualified prospects who become drop outs, tuition rates would more closely reflect the true costs of training.

If schools decide not to, or if the market prevents schools from raising tuitions, schools are left with two options in responding to a pro rata refund. They can accept lower profits on each drop-out or they can change their mode of operation so that more students complete. Neither of these options is contrary to the public interest.

This causes us to emphasize a point so conveniently ignored by those who oppose a pro rata policy. The schools that will have the greatest loss of profits will be those with the harshest refund policies and the largest number of drop-outs--often caused by misrepresentation, random recruitment, and unfair sales practices. Under existing refund policies, schools are encouraged to enroll many unqualified prospects and to use deceptive practices in the process. Since these refund policies allow the school to keep a fair portion of the tuition obligation, there are no incentives to monitor drop-out rates and insure that they are kept as small as possible. In one sense, schools with high drop-out rates caused by unfair and deceptive practices enjoy a competitive advantage over their more efficient competitors simply because they can earn the same income without providing the same service. In another sense, the argument that changing to a pro rata policy might be costly is, in reality, an argument based on the assumption that schools should be permitted to continue to use unfair and deceptive enrollment techniques and continue to foster large drop-out rates.

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[386] See Part I, Sections IV-C(4) and VI-B(4), supra.

Theoretically one would expect that schools which have lower drop-out rates could compete on the basis of offering a more liberal refund policy, and by advertising their advantageous placement and drop-out rates. However, since many students do not know of their obligations upon dropping out, and since there is strong industry resistance to liberalized refund policies and to drop-out and placement disclosures, such competition is not taking place. Thus one result of an across-the-board refund policy will be to take away the profitability that now results from the unfair competitive advantage of schools that are long on sales and advertising and short on performance.

Actually, we believe the refund provision may actually cause tuition rates to go down or the quality of courses to increase markedly. As schools stop excessive investments in deceptive or uninformative advertising and sales and begin to enroll only qualified applicants, competition will be based on the price and quality of the course. Since schools may now spend as much on advertising and sales as instruction, with a greater percentage of expenses devoted to instruction, one would expect to get improved or less expensive courses.

Of course, we cannot assure the Commission that any one of these alternatives will necessarily result from a pro rata refund provision in the Rule, because all of them are likely to occur to some degree. Some schools that clearly disclose their refund policy will be able to raise tuitions because of the resulting consumer benefit from the insurance of that policy. For schools where drop-outs are subsidizing graduates, this is likely to cease. Schools with high drop-out rates will be forced to either improve their enrollment techniques or face reduced profits. As schools alter their advertising and sales approaches, and competition on the merits of the course increases, tuitions should in fact decrease. None of these results is against public policy, and none are so weighty as to justify the Commission abandoning its statutory responsibility to proscribe unfair and deceptive refund policies and prevent other unfair and deceptive practices. This is particularly true since there is no evidence of undesirable effects resulting from the numerous recent implementations of liberalized refund policies by states, federal agencies, accrediting associations, and the schools themselves. On the contrary, schools have shown themselves to be capable of performing under all forms of refund policies.

There would be a number of other beneficial side effects to a pro rata policy. There would be a tendency to screen enrollees more carefully and counsel them before enrollment, reducing wasted social resources caused by high drop-out rates. Courses and student services should improve as a result of efforts to retain students, thus reducing another social waste--students who cannot find jobs. Student search costs should be reduced. If a student enrolls in the wrong course and immediately drops out, his or her financial loss will be minimal. The student will then be able to enroll in the proper course without a great expenditure in a new search.

Student, school, and commission resources will be saved because there will not be the confusion of a myriad of refund policies applying to special jurisdictions, schools, and students. Instead there will be one, simple, clearcut, uniform policy.

(d) Arguments Critical of Pro Rata

One argument made against a standardized pro rata refund policy is that it does not take into consideration variations in course type and length.[387] Staff, in the recommended Rule, has varied requirements for different types of schools to carry forward the Rule's intent, but for this provision no particular exception is necessary. Our conclusion is bolstered by accrediting association and most state standards that do not make special accomodations for such variations either.[388] One would think accrediting and state agencies would be more likely to make exceptions for various types of courses, since they are not only concerned with consumer protection, but also education and institutional issues. By their adoption of the uniform policies, they demonstrate the feasibility of uniformity.

Industry members on the other hand criticized the registration fee in the original published Rule that allowed schools to retain different registration fees according to the size of their tuition. That Rule had a registration fee of five percent or $25, whichever was less. Industry members argued that registration costs for a $200-course may be no different than a $500-course, but the Rule allows the $500-course to keep two-and-a-half times as much money.[389] The recommended Rule has been amended in this regard so that all courses can now keep $25 irrespective of their tuition.

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[387] See, e.g., initial comments of AICS, Exhibit K-867.

[388] See Part I, Sections IV-B(1) and (2), supra. For example, the very accrediting agencies that argue for school-by-school variations have established singular minimum policies applicable to all their members.

[389] See, e.g., comments of Truck Marketing Institute, Exhibit K-210, p. 4.

Others criticized even a $25 registration fee as inadequate to compensate the school for its acquisition costs.[390] However, as described above,[391] the Rule does not intend to cover an enrollee's "share" of advertising and sales costs that could run into hundreds of dollars depending on how sales commissions are calculated. The $25 is intended to help schools defray some of the paperwork expenses incident to registering a student.[392] We reject any notion that the Commission must endorse a registration fee sufficiently large to reward a school for the very false, deceptive and unfair sales and advertising practices that are the basis of this proceeding.

Other industry members criticized the Rule for not making special allowances for the costs of equipment supplied students.[393] Such special allowances would offer much room for manipulation, needlessly complicating the Rule and its enforcement. Many courses now are really little more than offers of television sets or other equipment.[394] If the Rule were to make such an exception, schools could obligate students for virtually the full tuition immediately by supplying all equipment before the first class or lesson began. Moreover, it would force the Commission into numerous judgments as to the "fair market value" of the equipment. Moreover, schools have no problem under existing accrediting association standards that do not make allowances for such equipment either. Schools just supply such materials gradually through the course. If need be, students can purchase necessary equipment early in the course from a seller independent of the school. As with other aspects of refund policies, establishing a refund to meet existing modes of doing business will result in creating incentives for all schools to adopt those modes in order to avoid the remedies of the Rule.

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[390] See, e.g., comments of NATTS, p. 102, Exhibit K-520; comments of AICS, p. 77, Exhibit K-867; comment of NHSC, p. 130, Exhibit K-439; comment of M-W Corporation, p. 23, Exhibit K-863; comment of Bell & Howell Schools, Inc., p. 51, Exhibit K-856; comment of MBTI, p. 7, Exhibit K-65.

[391] See text at notes 353-356 supra.

[392] See, e.g., breakdown of clerical and administrative costs in comments of Bryman Professional Careers Institute, Exhibit K-591.

[393] See, e.g., comments of NHSC, p. 122, Exhibit K-439; testimony of S. Ritman, Medical Director, Gradwohl School of Laboratory Technique, Inc., Tr. 6796; testimony of W. Wright, President, American School of Correspondence, Tr. 7326; testimony of M. Rasken, President, IBA Prestige Beauty Colleges, Tr. 6629, 6635; testimony of F. Albanese, Executive Secretary, Ohio State Board of School and College Registration, Tr. 6673.

[394] See Part I, Section V-C(3), supra.

Another issue the industry raised about pro rata is the "empty chair" problem.[395] The argument essentially states that schools in certain situations suffer a significant loss when a student drops out that is only retrievable by obligating the student for almost the full tuition. The school cannot otherwise cover its loss. An example of this would be one of a limited number of spots in class filled by a student who, upon dropping out, leaves an "empty chair." The school has made an expenditure for the class and foregone income by turning away other applicants. The drop-out, by leaving, does not pay his or her share of these fixed expenses which cannot be mitigated upon the student's dropping out. Under a pro rata policy, it is argued, the school must unfairly absorb these expenses while losing potential profits from the student it turned away.

It is important to note what situations do not fit into this pattern. Correspondence and residence courses without fixed class schedules do not face this problem. Such courses can anticipate with reliability how many and when students will drop out during the course.[396] The school can then adjust its resources accordingly with no special losses when students drop out as expected.

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[395] See, e.g., comments of NATTS, p. 101, Exhibit K-520 initial comments of AICS, p. 76, Exhibit K-867 comments of Bell & Howell, p. 51, Exhibit K-856 testimony of H. Rabin, President, Illinois Association of Trade and Technical Schools, Tr. 7499; testimony of M. Rasken, President, IBA Prestige Beauty Colleges, Tr. 6628.

[396] See, e.g., Weaver Airline Personnel School, Response to Accrediation Commission Questionnaire re: Drop-out and Completion Rates, Exhibit B-52; F.T.C. Digest of Testimony: F.T.C. Hearings on Proposed Guides for Private Vocational and Home Study Schools (December 1970), Wisconsin Educational Approval Board Hearings on Proposed Administrative Rules (September 1972), Hearings Before Subcommittee on Readjustment, Education and Employment of The Senate Committee on Veterans' Affairs (March 1972), New York State Hearings in the Matter of Computer Schools (December 1970), Exhibit A-23; statement of D. Lawson, former Computer Learning Center loan interviewer, Exhibit D-231; Ohio Higher Education Notebook (1973), Exhibit C-152; testimony of R. McTigue, Director of Admissions, East Coast Aero Technical School, Tr. 839; testimony of W. Parrie, President, Athena Beauty College, Tr. 5330; testimony of S. Burgess, Vice President, Heald Business College, Tr. 3506; testimony of R. Annenberg, President, Western College of Allied Health Careers,

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For example, correspondence courses can print a large number of early lessons and a small number of later lessons. And, despite some sales claims, correspondence course enrollments are almost never limited. One student's enrollment does not prevent another's since the lessons are fungible. Likewise, residential schools with rolling enrollments can always fill empty seats as they arise.

Nor does a residence course which does not operate at full capacity present the "empty chair" problem. If a school accepts all qualified applicants, the fact that one drops out does not deprive the school of income it could have derived from another applicant. Many of the schools testifying in this proceeding admitted to not operating at full capacity.[397]

The empty chair problem only becomes worrisome when a residence course with a fixed class schedule operates at full capacity at all times. But even here applicants who are turned away often can enroll in a course the same school gives somewhat later. Or the school can anticipate drop-outs and over-enroll or restructure classes as their size dwindles. As Part I, Section VI, showed, the vast majority of schools know and predict their drop-out rates in order to measure future costs and demands.

Thus the empty chair problem can only be a real problem when a school has a fixed class, at full capacity, without another one starting soon, and which cannot be structured to anticipate precisely the number of drop-outs. Then when an individual drops out, a seat in the class room is "wasted." The school has paid for it and turned away another applicant who might have filled it. (Of course, the school cannot be assured that the turned-away applicant would not have dropped out even earlier.)

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[396] (Continued)

Tr. 3524; testimony of G. Bay, Certified Welding School, Tr. 3681; tstimony of R. Blair, Colorado Aero-Tech, Tr. 3720; testimony of M. Honor, Honor Business College, Tr. 3913; National Association of Trade and technical Schools--Self-Evaluation Reports, Visiting Team Reports, and File Review Letters, Exhibit F-61; National Home Study Council--Self-Evaluation Reports and Chairman's Letters, F-64.

[397] See, e.g., testimony of A. Fusco, Attorney, West Virginia Career Colleges, Tr. 2312; testimony of G. Pritchett, President, North Carolina Association of Business Schools, Tr. 2810; testimony of F. Rich, President, Atlanta College of Medical and Dental Assistants, Tr. 2981.

Putting aside the possibility that these seats have been filled by deceptive enrollment practices, it is our view this can be mollified if schools will improve their planning. By anticipating the possibility of some drop-outs--even if the precise number cannot be ascertained--the school can protect itself against a total loss on an "empty seat". Moreover, given the few instances in which all the attributes of the empty seat situation are present, given the generally salutary effects of pro rata cited above, we do not find these arguments persuasive. Not the least of our concerns is the fact that schools presently meeting the empty seat criteria have adjusted to existing refund policies. There is no logical distinction between pro rata and other refund policies in this regard.

Some schools go further and argue that drop-outs must pay an equal share of fixed costs and only be refunded unused variable costs.[398] But no existing refund policy begins to obligate drop-outs to pay for this. Nor is there any special reason why they should. Such fixed costs were not incurred or increased in reliance upon an individual's enrolling and no other profits were foregone in the enrollment of a particular individual. Advertising and sales costs are fixed whether any particular individual enrolls or not. The school does not incur these expenses with a reliance upon the enrollment of any particular individual. It makes as much sense to have early drop-outs pay for their "share" of sales and advertising costs as it does to charge those who just read the ads or listen to the salespeople with an equal "share" of these costs. Such costs are fixed and are not incurred directly incident to an individual's enrollment. Because a school decides to compensate its sales force on a commission basis, it does not follow that drop-outs must pay the school whatever commission the school gives the salesperson who enrolls a student. Such commissions are intended to compensate the salesperson not just for efforts in enrolling that student, but also efforts in trying to enroll others. Moreover, calculations of students' "share" of sales expenses often ignores the fact that many schools scale their commissions to how long a student remains enrolled in the course or that salespeople often never receive all of their accrued commissions.[399]

The argument becomes even more attenuated when one realizes that schools anticipate their large drop-out rates--including the many early drop-outs--and in fact structure their advertising and sales practices around them.[400] We believe that any refund policy that requires early drop-outs to subsidize advertising and sales practices that often cause such early drop-outs is itself unfair.

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[398] See, e.g., comments of McGraw-Hill, p. 37, Exhibit K-900; comments of M-W Corp., p. 24, Exhibit K-863; comments of LaSalle Extention University, p. 42, Exhibit K-237.

[399] See Part I, Section V-B, supra.

[400] See "Comment: The Proprietary Vocational School: The Need for Regulation in Texas," 49 Tex. L. Rev. 69 (December 1970); and Part I, Section VI-A, supra.

Similarly, industry members point to enormous acquisition costs which they say do not begin to be covered by a student's obligation under the Rule's refund policy. Again industry members ignore the fact that schools under existing refund policies are not beginning to cover these claimed acquisition costs either. And again that is because no refund policy should. As we have said before, the bulk of these claimed acquisition costs are in advertising, commission, and other sales expenses. Staff does not feel each enrollee, no matter how early he or she drops out, must pay for a full share of such "acquisition costs".

Perhaps because of the above misplaced arguments, industry representatives have also argued that a refund policy must have a "cap"--often it is suggested at the 50 or 75-percent point--after which time no refund would be owed the drop-out.[401] However, any "cap" would encourage schools to manipulate the course and equipment offerings to keep students enrolled until that point. After that point, there may be no incentive to offer a worthwhile course. Moreover, when an in-course cap is selected, one must face the difficult questions raised by schools' definitions of lessons or classes. Once a cap is set, schools may seek to reach it by recharacterizing their lesson designations.

Students may also uncover misrepresentations, particularly about jobs or equipment offerings, very late in a course. Students should be able to drop out at that time, only paying for classes they attended. Moreover, schools have cost savings when students drop out even late in the course, particularly expenses related to placement services. If schools are concerned that students drop out late in a course solely in order to realize a small refund savings, they can make the end of the course and placement services valuable enough that students will feel the necessity to remain.

Others argued more generally that a pro rata refund would encourage drop-outs.[402] They argue that the Federal government, instead, should be encouraging enrollment in vocational education. To some extent the refund provision is intended to encourage drop-outs--those who were misrepresented to or improperly or unfairly enrolled. Moreover, any social costs created by students who "should" stay enrolled but drop out are more than counterbalanced by the unreasonable costs to the large percentage of enrollees who are already dropping out under present harsh refund policies. We believe that if students are to be encouraged to remain enrolled this should be done by making the course meet their needs and expectations, not by holding the threat of an inadequate refund over their heads. Moreover, the best way the Commission can encourage sellers to offer courses that meet buyers' expectations and needs is to prescribe a pro rata refund that discourages the school from unfair and deceptive enrollment practices by reducing the profits to be gained from such practices.

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[401] See, e.g., testimony of W. Goddard, Executive Director, NATTS, Tr. 9166; testimony of B. Ehrlich, Counsel to NHSC, NATTS, and CAC, Tr. 9271.

[402] See, e.g., initial comments of AICS, p. 80, Exhibit K-867; comments of LaSalle Extension University, p. 42, Exhibit K-237; testimony of A. Bunch, Chairman, Mid-State College, Tr. 8197; testimony of H. Hoggesteger, Advance Schools, Inc., Tr. 8829.

Some industry representatives, in fact, argued that a pro rata refund would encourage schools to make their courses so easy that no one would drop-out--so easy as to be devoid of educational value.[403] If a course is inadequate to meet its stated objective, this will show up in a low placement rate for the course--a fact that must now be disclosed to the prospective enrollees. Students are also likely to drop out if a course is too easy, just as they are if it is too difficult. Moreover, the educational quality of a course is the responsibility of other groups--accrediting associations, state agencies, the Office of Education, the Veterans' Administration and the schools themselves--not of the Commission. We cannot assume they will so totally abrogate their responsibility that they will continue to endorse courses with no educational merit.

Others criticized pro rata as discouraging schools from enrolling "high risk" students or other "marginal" individuals who could benefit from vocational education.[404] One of the bases of pro rata is that it will discourage schools from enrolling unqualified students. If the student is qualified, and can thus complete the course, pro rata should not discourage his or her enrollment. The Rule also exempts from its coverage those students who may be such "high risk" students, such as those enrolled in rehabilitation and other special training programs.[405] We are not persuaded that the Commission should continue to condone practices that result in the enrollment of many consumers who are never fully apprised of their obligations or ability to complete the course. It is somewhat disingenuous for schools to now place themselves in the role of protecting "high risk" consumers.

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[403] See, e.g., testimony of B. Ehrlich, Legal Counsel to NHSC NATTS, and CAC, Tr. 9341.

[404] See, e.g., testimony of M. Luskin, President, Marinello Schools of Beauty, Tr. 5551.

[405] See paragraph (a) of Definitions, supra and Part II, Section IV-F, infra.

Other commentors wanted the Commission to go beyond pro rata and prohibit or offer a full refund to students enrolled through misrepresentations.[406] We must reject this proposal as being unenforceable simply because the Commission would be compelled to judge every instance of alleged misrepresentation.

Others criticized the pro rata provision as outside the Commission's authority. One argument goes that Congress, in its VA legislation,[407] has somehow preempted the Commission from adopting its refund standard for all proprietary schools by its actions in offering veterans certain protections.[408] The VA statute requires unaccredited residential schools to give a more liberal refund than the staff's recommended Rule does by not even including a registration fee. The recommended Rule requires schools to keep no more than a pro rata portion plus a registration fee. It is a minimum standard. For other schools the VA statute sets out a less liberal refund standard. But the statute does not prevent schools from giving a more liberal policy, as many schools do. The standard is a minimum standard that does not prevent schools from being more generous to students.[409] Thus, in both instances, there is no conflict between the proposed Rule and VA requirements.

Others argued that the Heater[410] case was a precedent for the proposition that the Commission lacks authority to order refunds.[411] However, the Commission's authority to prescribe a pro rata refund in a trade regulation rule under the Magnuson-Moss - F.T.C. Improvements Act is much clearer than its power to order consumer redress retroactively in an individual adjudication before the passage of the Act. The Commission's authority to set a prospective standard as to what kinds of refund policies are unfair and deceptive is clearly set out in the Magnuson-Moss Warranty--F.T.C. Improvement Act, which authorizes the Commission in Rules to define with specificity, unfair and deceptive practices, and adopt requirements to prevent such practices.

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[406] See, e.g., testimony of J. Hughes, Chairman, Senate Education Committee, State of Minnesota, Tr. 8587.

[407] 38 U.S.C. Sections 1776.

[408] See, e.g., initial comments of AICS, p. 21, Exhibit K-867; comments of NHSC, p. 21, Exhibit K-439; comments of National Association of State Administrators and Supervisors of Private Schools (NASAPS), p. 6, Exhibit K-784.

[409] See testimony of G. McMichael, General Counsel, Senate Committee on Veterans' Affairs, Tr. 2413.

[410] Heater v. F.T.C. 503 F.2d 321 (C.A. 9th 1974).

[411] See comments of NHSC, pp. 116-18, Exhibit K-439; testimony of B. Ehrlich, Counsel to NHSC, NATTS, and CAC, Tr. 9325; initial comments of AICS, p. 13, Exhibit K-867.

2. Ancillary Refund Requirements

This section will discuss the basis for other requirements in the Rule that accompany the pro rata provision--how a student cancels a contract, when the school must make the owed refund, how the school must disclose this refund policy to the student, and how refunds are treated for combination courses.

(a) Cancellation Procedures

The Rule provides that students can cancel in writing or by constructive notice. The school must provide the student with a cancellation form that can be mailed in, and serve as written notice. As a concession to industry concerns about the Rule's compliance costs,[412] the cancellation form no longer must be postage-paid.[413] Students can also provide the school with any other form of written notice.

Constructive notice can also be given to cancel a student's enrollment. Constructive notice means that after a student has failed to participate in a course for a certain period of time, schools must be on notice that the student has dropped out even if he or she has not provided a written notice to that effect. For schools to ignore this clear indication of intent would work a severe hardship on students. For correspondence schools and residence schools without fixed class schedules, it would mean students would never get owed refunds. For residence courses with fixed class schedules, it would also mean students would incur added but unintended financial obligations. Particularly when schools have been known to ignore written notice or when confusions may arise about whether a student has actually cancelled,[414] constructive notice provides a clear-cut resolution of such problems. The argument against the use of constructive notice is that it may cancel students who wish to remain enrolled. We have amended the proposed Rule so that the provision does not lead to such unintentional cancellations, but still offers the student adequate protection.

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[412] See comments of AICS, p. 20, Exhibit K-867; McGraw-Hill, p. 35, Exhibit K-900; testimony of K. Renner, President of the National Association of Cosmetology Schools, Tr. 6579; testimony of J.M. Bartels, National Director, Manpower-Business Training Institute, Tr. 7680.

[413] See subparagraph (g)(1) of the Rule supra.

[414] See Part I, Section VI-B(4), supra.

The constructive notice provisions contained in the recommended Rule vary with the type of school involved. The proposed Rule called for a 90-day constructive notice period for correspondence courses. If a student failed to submit a lesson for 90 days, the school was required to treat the student as having cancelled, even though no written notice was received. Many home-study schools argued that 90 days was an insufficient period to trigger cancellation. It was contended that such a requirement would force schools to cancel students who otherwise would graduate.[415] We have sought to ensure that this does not happen in a number of ways. One of these is extending the time period from 90 to 120 days.[416] Another is by making it clear that the student can override this constructive cancellation by a written expression of intent to continue.[417] Thus, even if a student fails to submit a lesson for 120 days and is "cancelled", if the student later notifies the school, he or she can remain enrolled. The school is free to contact such a student to ascertain whether the lapse is inadvertent or whether the student intends to withdraw, a procedure already followed by all large home study schools.

Moreover, even after the 120-day period has expired, and the school begins to process the student's refund, it need not make such a refund until 21 days thereafter.[418] Thus, in the case of a student who cancels through the constructive notice provision, as many as 141 days may elapse before the refund need be made. The combination of this time period, plus the ability of the school to contact the student to determine if the lapse is inadvertent or unintentional, negates the possibility that students truly desirous of remaining enrolled will be cancelled.

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[415] See comments of NHSC, p. 95, Exhibit K-439; comments of McGraw-Hill, p. 36, Exhibit K-900; comments of M-W Corporation, p. 25, Exhibit K-563; comments of Bell & Howell Schools, Inc., p. 38, Exhibit K-856; comments of LaSalle Extension University, p. 45, Exhibit K-237.

[416] See subparagraph (n)(3) of the Definitions supra.

[417] See subparagraph (g)(4) of the Rule supra.

[418] See subparagraph (e)(3) of the Rule supra.

Note that correspondence schools participating in the FISL program are subject to very similar existing HEW requirements, and that NHSC has a 90-day constructive notice period for the first six months of a course.[419]

The constructive notice provisions for residential schools have been modified as well. Residential schools without fixed class schedules are now required to treat as cancelled any student who fails to attend class for 60 consecutive calendar days. If a residential school operates on a fixed-class schedule, the school must treat as cancelled any student who fails to attend classes for seven consecutive days or 15 percent of the course, whichever is the lesser.[420]

It was our conclusion that residential schools without fixed-class schedules possessed many of the characteristics of correspondence schools, at least in the area of flexibility in attending classes. Accordingly, for schools of this nature it was felt that by lengthening the time period for automatic cancellation we could eliminate some of the potential for sweeping into the category of automatic cancellation those persons who failed to attend classes for some reason other than their desire to discontinue the course. Yet it also protects consumers because under the Rule's requirements, such residential schools, like home study schools, can only charge for lessons actually attended.

However, as to courses with fixed-class schedules, some commentators felt that the previously allowed 30-day period was too lengthy.[421] Particularly in very short courses this 30-day period could have harsh consequences. In its most extreme form a student could attend only the first class in a one-month course and be obligated for the full tuition. On the other hand, the danger of unintentional cancellation under the seven-day constructive notice provision is minimal. If a student has failed to attend classes for a period it is doubtful that he or she intends to remain active. As previously indicated, the schools remain free to contact the student who appears to be heading toward, or even after, automatic cancellation, to determine if he or she does indeed wish to withdraw.

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[419] See Part I, Section VI B(4), supra.

[420] See subparagraph (n)(1) and (n)(2) of Definitions, supra.

[421] Comments of the Wisconsin Educational Approval Board, p. 6, Exhibit K-866; comments of MBTI, p. 7, Exhibit K-65; testimony of D. Stucki, Executive Secretary, Educational Approval Board, Tr. 8502; testimony of A. Thornton, Director, Education and Rehabilitation Service, Veterans' Administration, Tr. 2171.

Moreover, on top of this seven-day period is another twenty-one day period before the refund must be made. Thus, if a student fails to attend a residential school with a fixed class schedule for seven days, the school must begin processing a refund. However, such a refund need not be made for twenty days from the date of cancellation. If at any time during that twenty-eight day period the student declares in writing an intent to remain active, the refund need not be made and the student remains enrolled. If during this period the student were to show up for a class, the school need only have the student sign a form declaring intention to remain enrolled. It is doubtful that a student, after missing a month's worth of classes, is still interested in remaining enrolled. But, even after that period, written notice of his or her intent to remain enrolled is still effective.[422]

The Rule's requirement for constructive notice for residential schools is similar to provisions in state and accrediting association standards.[423]

(b) Refund Timing

In the event that the amount of money paid by the student exceeds his or her total obligation under the refund policy, the school must provide the student with the correct refund within twenty-one days of the date of cancellation. In the event that the school has received a promissory note or other evidence of indebtedness for an amount exceeding the student's total liability, the school must cancel such evidence of indebtedness in the same time period. This twenty-one day period for schools to make owed refunds is an amendment of the originally proposed Rule's ten-day period. Certain industry members argued that the ten-day period imposed significant administrative burdens on the schools.[424] To alleviate this administrative inconvenience, as well as to allow for unexpected contingencies, such as delays in the mail, the time period has been extended to twenty-one calendar days. This period seems a reasonable compromise between the ten-day period in effect in jurisdictions such as Wisconsin and the thirty-day period followed by the accrediting associations.[425] However, some requirement is necessary to insure that legally required refunds are, in fact, made.

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[422] See subparagraph (g)(4) of the Rule supra.

[423] See Part I, Section VI-B(4), supra.

[424] See, e.g., comments of NHSC, pp. 126, 131, Exhibit K-439; Initial comments of AICS, p. 81, Exhibit K-867.

[425] See Part I, Section VI-B(4), supra.

(c) Notice of Cancellation Rights and Refund Policy

The recommended Rule contains a number of requirements designed to inform consumers of their refund and cancellation rights. The Rule contains a requirement that explanations of the manner in which students may withdraw from the course and the refund they will receive appear in boldface type in the enrollment agreement.[426] The Rule mandates the precise language to be used to explain both the cancellation and refund rights.

In addition to the notice which appears in the enrollment agreement, a duplicate copy of the notice explaining the cancellation and refund policy must be delivered to the student within ten days after he affirms his enrollment agreement.[427] This is is a change from the proposed Rule to insure that consumers understand their refund rights promptly upon enrolling, not after being well into the course.

The Rule's mandated language explaining the cancellation and refund policies has been rewritten in clearly understandable language. The proposed Rule's consumer notices have been criticized for failing to account for the reading level of the average consumer.[428] Accordingly, the disclosure statement for cancellation and refund policy (and all other consumer notices) have been reworded in language more understandable to the average consumer.[429]

The disclosure of the cancellation and refund policy to students insures that they understand their rights under the refund policy, allowing them to make an informal decision if they find themselves unsuited to the course, the course was not as represented, or if they are considering withdrawing for some other reason.[430] In addition, since the record demonstrates that numerous misrepresentations occur concerning the refund policy utilized,[431] it is important that consumers understand their actual obligations.

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[426] _See_ subparagraph (f)(1) of the Rule _supra_.

[427] _See_ subparagraph (g)(1) of the Rule _supra_.

[428] _See_, _e.g._, testimony of J. Lack, Commissioner of Consumer Affairs, Suffolk County, Long Island, Tr. 992; testimony of B. Shimberg, National Vocational Guidance Asociation, Tr. 1083.

[429] The notices, as redrafted, score approximately 90 on the "Flesch test," which is considered "very easy" to read. _See_ Rudolf Flesch, _The Art of Readable Writing_, Harper and Row (1949).

[430] _See_ Part I, Section VI-B(4), _supra_.

(d) Combination Courses

An area in which the original proposal has been revised is that of combination courses--courses in which there is both a correspondence and residential portion. Under the published Rule provision, the school was required to combine the two portions of the course for purposes of calculating the refund due. However, under this method of calculating refunds, a potentially abusive situation could have developed. A school desiring to circumvent the intent of the refund requirement could structure its course so that it contained an inordinately large number of correspondence lessons. By making those lessons very easy, the school could insure itself a substantial portion of the tuition if the student completed all of the correspondence lessons, even if the residential portion of the training might be more important and more costly to the school. In such a case, the residential portion of the training, where the "hands-on" portion of the training occurs, would only bear a small percentage of the actual costs which should be attributed to it. In essence, the consumer pays most for that which is worth the least.

To act as a deterrent to this type of conduct, we have recommended that the refund be calculated separately for portions of the training, which will also have separate tuitions allocated to them by the school. However, only one $25 registration fee may be kept.

To discourage schools from further manipulations by allocating an unrealistic proportion of the total tuition to the correspondence section, the recommended Rule contains a new provision regarding the full disclosure of these separate price allocations. Anytime the school indicates the tuition cost of a combination course--whether in advertising, other written documents, or orally--separate prices must be stated for the two component parts.[432]

For combination courses, the constructive notice period which is applicable depends upon the timing of the withdrawal. If a student ceases submitting correspondence lessons, constructive notice is calculated in the manner set forth for correspondence courses. By the same token, if a student fails to attend the residential classes, the constructive notice requirement is that set forth for residential courses.[433]

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[431] See Part I, Section IV C(4), supra.

[432] See subparagraph (h)(1) of the Rule supra.

[433] See subparagraph (h)(3) of the Rule supra.

F. Definitions

While the basis and purpose for most definitions has been described above,[434] four terms need greater elaboration here--buyer, seller, course, and combination course.

1. Buyer

A number of commentors have presented a varied array of special circumstances where the Rule's requirements are inappropriate. These include the enrollment of students in vocational rehabilitation programs,[435] contracts between proprietary schools and public institutions,[436] employers or unions selecting courses and subsidizing employees to take them,[437] and numerous other cases where the concept of the term "buyer" does not really fit the mold of an individual consumer confronted with a normal consumer purchase transaction. On the contrary, the buyer in each of these instances is not the student who actually takes the course, but rather a sponsor who is financially responsible for the tuition. We have drafted the definition of buyer so that many of these special students are not covered by the Rule.[438]

"Buyer" does not include individuals whose enrollment has been sponsored by a government agency, charitable organization, labor union, school, or employer if such organization has selected the course to be taken. The intent here is to exclude from the Rule's coverage the enrollment transaction when the school is actually dealing with a sponsoring organization, and not an individual consumer. For example, the Rule is not needed when a charitable organization, based on its accumulated expertise, determines to send rehabilitaion students to a particular proprietary school, and then negotiates the financial terms of the arrangement. Similarly, when a community college subcontracts with a proprietary vocational school to offer particular courses to the community college's students, staff must assume that the community college is capable of evaluating the proprietary school's program without the Rule's safeguards. Obviously, in situations such as these the buyers are fully capable of protecting their own financial and educational interests, and are not in need of the remedial relief offered by the Rule.

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[434] See Part II, Section IV-B - E, supra.

[435] See, e.g., testimony of S. Gilberg, St. Louis Chapter of National Rehabilitation Association, Tr. 6738.

[436] See, e.g., testimony of K. Renner, President, National Association of Cosmetology Schools, Tr. 6571.

[437] See, e.g., testimony of C. Hall, Executive Vice President, National Institute for the Food Service Industry, Tr. 7652.

[438] See paragraph (a) of Definitions supra.

On the other hand, the definition of buyer explicitly does not exclude from the Rule's coverage students whose enrollment in a course is selected or determined by another proprietary school. This is to insure that sellers do not attempt to circumvent the Rule by creating dummy intermediary schools whose sole function is to act as recruiting mechanisms for affiliated institutions.

In addition, students who receive financial assistance, but who still must make enrollment decisions--albeit from a list of approved schools--are covered by the Rule. Thus, students are not outside the Rule's coverage because of their participation in the Guaranteed Student Loan Program, or their utilization of veterans' benefits. Under both of these programs the student is still directly responsible for selecting the course of study, and is always in direct contact with the school and its representatives. As we have described in detail, it is often these types of subsidized students who face the most severe consumer protection problems.

2. Course

The term course is defined so that several types of programs are excluded from the Rule's coverage since they are not central to the Commission's concern in this proceeding.

Several industry members complained of ambiguity in determining whether courses were vocational in nature as defined by the Rule,[439] and thus within its scope. That definition has been amended to make it clear that only courses that assist consumers with job-related objectives are covered by the Rule.[440] Courses which are intended largely to improve students' non-vocational skills, such as dance classes, are not covered. On the other hand, if a dance course's objective were to train or upgrade individuals to be professional dancers, the course would be covered by the Rule. The definitions have also been changed to make it clear that courses which are avocational in nature are exempted even if the school offers other vocational courses. It is the purpose of the Rule to focus on those courses where students believe that training will lead to new jobs or career advancement, and not to sweep within its coverage courses that are recreational or hobby in orientation.

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[439] See, e.g., testimony of H. Hoggesteger, Vice President of Education, Advance Schools, Inc., Tr. 8827; testimony of R. Knutson, President of Education Management Corp., Tr. 8885; testimony of B. Ehrlich, Legal Counsel to NHSC, NATTS and CAC, Tr. 9328-29.

[440] See subparagraph (c)(1) of Definitions supra.

"Course" also excludes two-year courses which consist of accredited college level instruction that is generally acceptable for credit toward a bachelor's degree.[441] This exclusion is wider than that contained in the proposed Rule, which only exempted such two-year programs if they were not-for-profit. Several comments have pointed out persuasively that even for profit, essentially academic, collegiate-type programs are outside the scope of the proceeding.[442] In addition, staff has amended the Definitions to make it clear that only the two-year collegiate programs are exempted, and not other courses offered by the same institutions. In order to qualify under this exclusion, the program must be acceptable toward a full four-year bachelor's degree and accordingly be _viewed_ as college preparatory in the same fashion that public, junior and community college programs provide direct transferability to four-year collegiate institutions.

We consider this exemption more advisable than exluding "degree granting" institutions as recommended by several commentators.[443] A number of witnesses and sources have described "degree mills," and how in some states the minimum requirements for degree-granting institutions were virtually non-existent.[444] Thus an exclusion of degree-granting schools could open a loophole by which all kinds of institutions could escape the Rule's coverage.

In addition, the Rule has been amended to exempt courses costing less than $100 from its coverage. This will not exclude any of the types of courses where abuses have been found, but will only apply to programs outside the objective of this proceeding--courses offered primarily by essentially charitable or public service organizations,[445] employers or labor unions,[446] or other groups with no interest in making a profit from their courses.

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[441] _See_ subparagraph (c)(2) of Definitions, _supra_.

[442] _See_, _e.g._, comments of School for Visual Arts, Exhibit K-392.

[443] _See_, _e.g._, comments of AICS, Exhibit K-867; comments of R. Dumaresq, Coordinator of Proprietary Schools, Pennsylvania Department of Education, Exhibit K-746.

[444] _See_, _e.g._, testimony of A. Knorr, Director of Planning, University of Nevada, Tr. 4007.

[445] _See_, _e.g._, testimony of R. Kinney, President, Hadley School for the Blind, Tr. 6604; comments of Economic Opportunity Commission of Imperial County, Inc., Exhibit K-817; comments of the Williamson Free School of Mechanical Trades, Exhibits K-52 and K-505.

[446] _See_, _e.g._, testimony of C. Hall, Executive Vice President, National Institute for the Food Service Industry, Tr. 7652.

The record demonstrates that these low-tuition courses are generally associated with organizations whose only purpose in setting this low-tuition value is to cover minimum administrative costs.

Moreover, the inexpensive courses create different economic incentives as to enrollment policies, and an incorrect purchase decision involves a limited amount of consumer injury. Many of the enrollment techniques that have been described as leading to unfair and deceptive practices--commissioned salespeople and widespread media advertising--are not economically feasible with a $100 course. On the other hand, if a consumer does not get placed, his financial loss is $100 not $2000. Similarly, the consumer's job expectations after completing a necessarily brief $100 course are very different from those if he or she spent six months enrolled in a $2000 course. Finally, for courses under $100, there are not large monetary differences between a pro rata refund and existing refund policies.

Schools are prevented from circumventing the Rule by trying to enroll students in a series of exempted $100 courses. Similarly, schools cannot advertise exempted courses and then try to switch the buyer to a course covered by the Rule. The definition only exempts one such course offered by the same seller in the same calendar year, and only for sellers that do not offer other courses covered by the Rule.[447]

3. Seller

The definition of seller exempts any school that enrolls fewer than 75 students[448] in the calendar year, thus excluding any extremely small school from the Rule's coverage.[449]

The smallest school to testify consisted of an elderly woman who tutors secretarial skills on a one-to-one basis in her home.[450] But numerous other schools are almost as small, particularly cosmetology and flight schools.

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[447] See subparagraph (c)(3) of Definitions supra.

[448] Actually the rule requires the enrollment of 75 or more enrollees, as defined by paragraph (b), not students, for a school to be covered by the Rule. Thus a school with 70 enrollees, and in addition, 50 non-starts, is not covered. Neither is a course with 70 regular students and 50 students enrolled by a rehabilitation agency, or through a community college, or who otherwise are not buyers, as defined in paragraph (a) of the Definitions supra.

[449] See paragraph (e) of the Definitions supra.

[450] Testimony of A. Hopkins, Typewriting and Shorthand School, Tr. 2064.

We estimate that the exemption will exclude 60 percent of the approximately eight thousand existing schools from the Rule's coverage--35 percent of trade and technical schools, 25 percent of the business schools, a very small percentage of correspondence schools, 75 percent of cosmetology schools, and about 70 percent of flight schools.[451]

The exclusion is based on several grounds. The false and misleading claims outlined in Part I, Section IV, and the sharp and deceptive sales practices described in Part I, Section V, appear not to be as consistently present in such extremely small schools. In addition, there seems a limited potential that such schools would ever develop sophisticated and deceptive advertising and sales practices, or have a significant impact on large numbers of consumers.

Moreover, while the Rule's requirements have been drafted to place a minimum burden on complying schools, any regulation would pose special problems for such small, often family-run schools.

In addition, it seems particularly appropriate that local and state authorities deal with these schools. The Commission's exclusion of schools with annual enrollment under seventy-five would serve primarily as an enforcement statement that the Commission will be devoting its resources in the vocational school area to monitoring of larger institutions' compliance with the Rule, since their practices have a greater impact on interstate commerce. Smaller schools are more likely to be a local problem whose law violations are best handled by local officials.

Staff should make clear that it is not recommending the exclusion of these schools because of any notion that the size of a school is somehow determinative of the legal issues associated with schools' refund, disclosure, advertising, sales, and enrollment policies. On the contrary, it is our feeling that all aspects of the Rule could be made applicable to any school that offers vocational training, irrespective of its size. Nor is staff implying that the Commission does not have jurisdiction over such schools.

However, the exclusion is a way of notifying local, state, and other federal agencies that the Commission will not as a practical matter of enforcement policy be monitoring these small, essentially localized institutions' compliance with the Rule. Any regulation, if needed, must continue to come from these other agencies. The Commission has never traditionally brought action against schools of this size.

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[451] See Part I, Section II-B(3), supra. An analysis of NATTS Schools shows that 13 percent would be so exempted--44 of 356. NATTS, Self Evaluation Reports, Visiting Team Reports and File Review Letters, Exhibit F-61.

Staff considers this a more precise and sensible way to exclude schools outside the intent of this proceeding than other suggestions offered. We reject categorically any suggestion that accredited schools be exempted. We have discussed how the accrediting associations do not and cannot protect consumers from unfair or deceptive practices.[452] To highlight this finding is the fact that much of the evidence of misrepresentations and unfair and deceptive sales techniques contained in this record involves accredited schools.[453] Similarly, staff rejects the suggestion that cosmetology or flight schools be exempted specifically from the Rule as suggested by some.[454] While the evidence seems to show that cosmetology and flight schools do not often utilize salesmen visiting the customer's home, and there are fewer complaints on the record concerning these schools, staff feels it unwise to exclude all schools that happen to teach certain subject areas. Under such an exclusion there would be no assurance that some schools would not shift their operations into career areas that were exempted. There seems less possibility such schools would care to operate if their local enrollment were limited to seventy-five. In fact, we feel that a major reason for the low visibility of unfair or deceptive practices by cosmetology and flight schools is the very small, limited nature of their operations.

Moreover, about three-quarters of cosmetology and flight schools will be eliminated from the Rule's coverage by the seventy-five enrollee requirement.[455] In addition, several of the larger cosmetology schools testified that the bulk of their students were obtained through contracts with local community colleges, again enrollments exempted from the Rule.[456]

A number of industry representatives have voiced their confusion concerning whether not-for-profit sellers are exempted from the Rule's coverage. The first paragraph of Part III, Section II ("The Rule") describes the Rule's coverage as being "in connection with the sale or promotion of any course in or affecting commerce, as 'commerce' is defined in the Federal Trade Commission Act, as amended." Thus the Rule's coverage of not-for-profit institutes tracks the Commission's statutory authority. If a seller is outside the Commission's jurisdiction, it is outside the Rule's coverage. If a seller is within the Commission's jurisdiction, the seller or one of its courses may be exempted from the Rule only if they fall within one of the Rule's explicit exceptions. It should be noted that many "not-for-profit" institutions, even if they are within the Commission's jurisidiction, may not be covered by the Rule if their courses are offered for less than $100 and meet the other requirements of that exception.[457]

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[452] See Part I, Section VIII, supra.

[453] See Part I, Sections IV and V, supra.

[454] See, e.g., testimony of L. Burian, Vice President, National Air Transportation Association, Tr. 2926; testimony of K. Renner, President, National Association of Cosmetology Schools, Tr. 6571; testimony of B. Ehrlich, Legal Counsel to NHSC, NATTS and CAC, Tr. 9383-84; testimony of C. Brown, National Association of Cosmetology Schools, Tr. 5298, 5300.

[455] See note 451 supra.

[456] See, e.g., testimony of K. Renner, President, National Association of Cosmetology Schools, Tr. 6569.

4. Combination Courses

A combination course is a combined residence and correspondence course. Often the student will submit correspondence lessons at his or her own pace and then, on completion, enter residence training. The residence portion often is fairly brief and offered on an almost continual basis by the seller. We have already discussed the special handling of such courses for purposes of the refund requirement.[458]

Combination courses also require special treatment for purposes of the disclosure requirements. The Rule specifies slightly different disclosures for residence and correspondence courses, owing mostly to the floating enrollments and study-at-your-own-pace characteristic of correspondence schools. Combination courses will make their disclosures as if they were correspondence courses because of the similarity of their overall format to such courses, in that combination courses are really correspondence courses with a residence portion appended at the end.[459] There are rolling admissions, and students study at their own pace. Their date of graduation bears little relation to their date of enrollment.

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[457] See subparagraph (c)(3) of Definitions supra.

[458] See Part II, Section IV-E(2)(d), supra.

[459] See paragraph (m) of Definitions supra.

V. The Costs of Industry Practices and the Effects of the Rule on Consumers, Small Businesses and the Market

In previous sections of this report we have alluded to an extensive number of costs and losses attributable to the acts and practices of proprietary schools. Because it is both convenient and conventional, we have cited record evidence that often places specific dollar amounts on these costs--inadequate refunds, wasted tuition, losses to federal and state subsidy programs.

However, because it is not always easy to identify and quantify other types of costs, we have provided this brief section to pull together and discuss all types of costs including those that are less tangible. This is particularly important and appropriate in the light of industry arguments about the "costs" associated with complying with the proposed Rule--costs that are generally totaled in dollar and cents terms. As this section demonstrates, not only is the Rule far less expensive in strict dollar terms than the existing losses felt by consumers and competitors, but it also will prevent or reduce the imposition of the harsh intangible external costs imposed by proprietary schools.

Since the costs of industry practices and the benefits to be derived from the Rule are often two sides of the same coin, we will confine our discussion mostly to costs with brief references to the Rule's impact on these costs.

A. Rule's Effect on Consumers

The Rule's effect on consumers will be to alleviate a significant portion of the injury current proprietary vocational school practices are causing consumers. The record shows that consumer harm involves financial, time, opportunity, and psychological losses. The financial loss is the easiest to quantify. If a student graduates and does not find a job, his financial loss may be as much as his whole tuition. Considering the size of many vocational school tuitions[1] and the low income of the students and their families,[2] the injury is immense. The student's loss may be of hard-earned personal or family savings or it may involve repayment of a sizeable loan. Since many students, with the encouragement of the school, may have been counting on repaying the loan with income from the job for which the course trained them,[3] the failure to get such a job can be doubly costly.

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[1] *See* Part I, Section II-B(4), *supra*.

[2] *See* Part I, Section III-D, *supra*.

[3] *See* Part I, Section IV-B, *supra*.

Considering the low industry placement rate,[4] there are literally hundreds of thousands of graduates who do not achieve their enrollment goal.

There are even more drop-outs who have not received what they expected on enrolling.[5] If a student drops out early in the course, his economic loss may not be as great as the full tuition, but owing to the strict refund policies now in existence,[6] it will still be significant,[7] including debts to holders of loan papers.

Even if a graduate uses his VA benefits--which are intended to be grants and not loans--to enroll, his economic loss can be substantial. If the veteran attends a residence course, the benefits are designed to pay for living expenses while the veteran is enrolled. The payments do not necessarily cover the tuition. The veteran also has to pay 10 percent of the tuition of a correspondence course.[8] No matter which type of school attended, the veteran dissipates a portion of his statutory entitlement for each lesson taken, which could have been otherwise used to enroll in voctional training that would have assisted the veteran in getting a job. Moreover, if the veteran drops out before completing the course, his contractual obligation continues to exist and can exceed any benefits paid out by the Veterans' Administration. In this regard, a veteran drop-out stands to lose as much money as any other drop-out.[9]

Financial loss is compounded by opportunity costs. While some vocational school courses are relatively short, others are rather long. Some students, for example, can spend years enrolled in correspondence courses.[10] While the student may be spending time in an unproductive course, he could have been enrolled in a course that would actually lead to a job or could have been employed in a paying position, perhaps as an apprentice, or receiving on-the-job training. In all these instances, the consumer has lost the opportunity to move quickly into solid training and thereupon into a career field.

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[4] See Part I, Section VIII-D, supra.

[5] See Part I, Section VI-A, supra.

[6] See Part I, Section VI-B, supra.

[7] See Part I, Section VI-C, supra.

[8] See Part I, Section VIII-C(1), supra.

[9] See Part I, Section VI-B(3), supra.

[10] See Part I, Section II-B(4), supra.

One of the greatest harms to the consumer in enrolling in a valueless course is not easily measurable in economic terms--that is, psychological harms. Many vocational school students are young, impressionable, and uncertain of their career plans. They may have dropped out of high school, college or another training program. They are marginally employed.[11] The bitter experience of losing hard-earned money and time to a valueless vocational school course may completely discourage an individual from pursuing other types of training or legitimate job opportunities. The psychological damage to the student can have the longest and most profound effects of any of the types of injuries caused by schools' unfair and deceptive practices. When an injured consumer has no source of assistance or redress, this psychological harm becomes even more damaging.[12] Particularly in light of the long espoused state and congressional policies of training unemployed and underemployed to take and fill productive career positions, it is particularly troubling to find these very groups being harmed by their training experiences.[13]

The Rule should alleviate all of these types of consumer injuries. The provisions dealing with placement and earnings disclosures should decrease the number of graduates who are unable to obtain related employment by encouraging schools to do a better job of offering programs leading to employment. Students will be induced to enroll in programs that have successful placement records. And whatever program consumers enroll in, they will have a realistic assessment of their job chances.

Similarly, drop-out disclosures should reduce the number of students who fail to complete. Schools will be encouraged to lower their drop-out rates and students can avoid choosing courses with high drop-out rates. By allowing a student to consider both placement and earnings disclosures at his leisure--away from the salesman's pressures--and then reaffirming his contract if he is still interested, enrollment of students likely to drop out or who are unqualified to obtain employment should also be discouraged. Only those committed to their training will be enrolled by the school after the affirmation process.

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[11] See Part I, Section III, supra.

[12] See Part I, Section VIII-E, supra.

[13] In his study of placement success at selected proprietary schools, W. Wilms concluded that for the vast majority of students attendance at proprietary vocational schools resulted in freezing these students into their existing economic and social status. Rather than providing these consumers with the training and jobs to break out of their unemployed-under employed-low income syndrome, these schools insured that their students remained where they were--partially because of lost opportunities to take alternate forms of education which might have led to advancement. See Wilms, The Effectiveness of Public and Proprietary Vocational Education, University of California at Berkeley (1974), Exhibit C-110.

For those students who still drop out, their economic loss is minimized by the pro rata refund policy. Veterans do not accrue unexpected obligations. Others will only be obligated for that portion of the course they took, which is significantly less than their obligation under existing refund policies. Instead of paying for all or most of the course, the student pays for the portion he used up to the time of his cancellation--an arrangement approximating consumers' own notions of their obligations.

On the other hand, the Rule should have minimal adverse effect on consumers. It will not deprive consumers of useful information but provide it to them. The Rule only prevents written or broadcast dissemination of job and earnings data when the school has insufficient substantiation for the claim. Such unsubstantiated and incomplete claims are unfair and deceptive. The Rule taken as a whole will provide consumers with more accurate information material to their purchase decision than they presently receive.

Nor should there be increases in tuition. As discussed previously[14] a pro rata refund, while reducing the economic loss of students who fail to complete, should not unfairly increase tuitions for graduates. There may be increases in those courses where dropouts are now subsidizing graduates or where consumers are willing to pay for a more liberalized refund policy. We expect an overall increase in the quality of courses or decrease in price as schools begin to compete on the merits of their service without engaging in costly unfair and deceptive enrollment practices.

B. Effect on Small Businesses and the Market Economy

The Rule should have a minimal effect on many small businesses. All sellers who enroll less than 75 enrollees in a single year, as defined by the Rule, will be exempted from the Rule. We estimate that this will exclude approximately 50 percent of proprietary schools--about 30 percent of trade and technical and business schools, and about 66 percent of flight and cosmetology schools.[15] The Rule focuses on the larger of the firms in this industry.

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[14] *See* Part II, Section IV-E, *supra*.

[15] *See* Part II, Section IV-F, *supra*.

The Rule should also have positive benefits for competitive small schools--whether covered by the Rule or not--since the Rule should improve this industry's competitive environment. Several commentators have described how the free market system is not functioning properly in this industry. Market theory dictates that in a properly functioning industry,[16] one would expect very high placement and graduation rates by virtually all industry members. Prospective students with accurate knowledge of their job prospects upon enrolling in various courses would rationally select only worthwhile courses--i.e., those courses that lead to job opportunity. Non-productive schools would find it increasingly difficult to compete. Courses that purport to lead to occupations where there was no demand for individuals with only a vocational school background or training would cease to be offered. Students with a low probability of completing a course or obtaining a job would not be enrolled indiscriminately. Competitive forces would keep prices at reasonable levels.

These experts expected these conditions to exist in theory, but on further examination found them almost totally absent. Whatever the cause--misleading advertising and recruiting techniques, nondisclosure of material information, unfair refund policies, federal and state involvement--the market is not functioning properly.[17] Placement rates for many courses are low; drop-out rates for many courses are high.[18] Significant amounts of schools' revenues derive from partial tuitions from drop-outs.[19] Schools are enrolling many more people in courses than could conceivably be absorbed by the labor market in the job positions for which they are trained .

The breakdown in this industry of the proper functioning of a free market has a number of effects. Schools who screen carefully, have close relationships with the labor market, teach a useful course, and assist a high percentage of their enrollees in obtaining employment, have difficulties competing on their merits with other schools. The consumer has difficulty deciding to choose such a school over another that advertises extensively, makes unsubstantiated and often untrue claims, and uses costly and sophisticated sales techniques.

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[16] See Wilms, footnote 13 supra; testimony of J. Wich, Assistant Professor of Marketing, University of Oregon, Tr. 4210, 4212-14; testimony of E. Stromsdorfer, Director of Evaluation, U.S. Department of Labor, Tr. 2456; and E. Stromsdorfer, Theoretical Impact of the Proposed FTC Disclosure Rule on Proprietory Schools, Exhibit C-206.

[17] See Part I, Section VII-D, supra.

[18] See Part I, Section VI-A, supra.

[19] See Part II, Section IV-E, supra.

This problem is accentuated when one school devotes a large share of its revenues to screening, instruction, teaching equipment, placement services, and follow-up services while another devotes it to advertising and sophisticated sales approaches. While one school attempts to retain and train students, the second directs its efforts to sign people up indiscriminately. Since this second school may have a school-oriented refund policy, the inevitably high drop-out rate is not harmful to the school. It can often pay a school to encourage or tolerate drop-outs instead of graduates. In fact, schools with drop-out rates in the 90 percent range can be seen as existing solely on the misapprehensions, mistakes, and inappropriate choices of consumers and not on the provision of adequate training for its enrollees. In essence, the school which exerts few efforts in providing adequate training leading to employment and instead places much of its emphasis on selling has succeeded in shifting numerous internal costs and made them externalities. Strict attention to course materials or placement success--a theoretically expected attribute of vocational school programs--is lost to emphasis on advertising and sales. By continuing to earn income on such sales, the school shifts the burden of its lack of proper programming to those least able to correct the problem--consumers and competitors. As long as this situation prevails, consumers will pay for non-useful courses without forcing upon certain schools the obligation to provide job related training.

Present industry practices can have another adverse effect on a school that adequately trains vocational students. Schools with large drop-out and low placement rates are producing large numbers of students who by word-of-mouth are criticizing enrollment in any proprietary vocational school, thus creating a poor image even for reputable schools.

The dysfunctioning of the market not only injures competitors, but also has significant social costs by creating substantial market inefficiencies. Search costs incurred by consumers in finding the vocational training they wish are seriously inflated. The dearth of accurate information about school drop-out and placement rates makes the search for such essential information quite costly for the consumer. Most consumers rely instead on information from the schools, much of which is inaccurate or deceptive. In addition, the consumer pays for this misleading information since a large portion of many schools' expenses is devoted to sales and advertising. If consumers enroll in the wrong courses, as high industry drop-out rates indicate they do, search costs can be even more substantial. Even a very early drop-out can encounter a sizeable tuition obligation under existing policies. Since trial and error purchasing is not feasible for this product, these start-up costs are further magnified.

Excessive costs are not the only social cost of industry practices. The cost of the course to consumers, whether they graduate or drop out, is artificially high, owing to significant expenses incurred from the use of extensive advertising and commissioned salesmen. Since these acquisition costs are often expended on unfair or deceptive enrollment methods or on the recruitment of students who will not benefit from the course of study, these costs are socially wasted and either the tuition and/or the amount charged to drop-outs must be unreasonably high in order to cover these wasted expenses.

Alternatively, the courses are not of the quality one would expect at these prices because of the large acquisition costs and incentives to develop successful selling instead of successful training techniques. Resources that should be utilized to develop an adequate course and to accurately disclose its successful placement rate are being devoted to advertising, and to a sales force that successfully enrolls students who base their purchase decision on factors other than quality, placement, and graduation rate of the course.

The Rule should diminish this social waste and improve the industry's competitive environment. This should be of direct benefit to competitive schools. The Rule, by encouraging disclosure of material information, and allowing consumers to consider that information in a proper setting away from the pressures of commissioned salesmen, should allow schools to compete on the merits of their programs. Moreover, the pro rata refund will discourage unfair and deceptive enrollment practices that can give schools who utilize them an unfair competitive advantage. The decrease of such practices will also improve the image of proprietary vocational schools.

The Rule's provisions should also drastically reduce search costs incurred by consumers as more information becomes available, and owing to the new refund standards, the cost of a wrong decision has been reduced. There will be a shift in revenues going from courses that depend on mistaken decisions to courses that attempt to enroll only those who can significantly benefit from the course.

The Rule should have a minimum detrimental effect on small businesses and other schools that offer a quality product through fair and non-deceptive procedures. The record shows that obtaining placement data is feasible and inexpensive.[20] It also shows that all schools are already in possession of drop-out data.[21] To the extent that refunds may be costly, this cost will be borne by those in the best position to account for it--the school and those students who are qualified to graduate. Moreover, where technical provisions--*e.g.*, affirmation and constructive notice--may have imposed unnecessary hardships on schools, the Rule has been amended to insure that no enrollment is lost to the school unintentionally.[22]

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[20] See Part I, Section VII-F, supra.

[21] See Part I, Section VI-A, supra.

[22] See Part II, Section IV-D and E(2), supra.

These minimal Rule effects on small businesses and other schools raises an important point. The Rule as drafted is intended to cope with the incentive structures prevalent in the proprietary school industry. As we have stated above, the Rule does not attempt to adopt existing industry practices by offering remedies that condone the continuance of these practices. On the contrary, we have sought to fashion remedies that not only identify the most troublesome industry practices but also shift incentives away from continued false, deceptive and unfair practices. In this regard, the most efficient and useful of proprietary schools--i.e. those schools that do in fact provide job opportunities for their students--stand to gain from the adoption of the Rule. If a school screens its applicants properly--as all presently claim to do[23]--only those qualified or committed to their training will ultimately be enrolled.

In turn, drop-out rates will be much reduced which, in turn, minimizes the refunds that must be made. Moreover, the prospect of having to give pro rata refunds to students who drop out creates incentives for schools to cease engaging in false, deceptive and unfair enrollment techniques. The "enroll every warm body" mentality cannot prevail if pro rata refunds must be made.[24] Again, the competitor who has not been accustomed to using such practices stands to benefit since his competition will now be compelled to cease filling the airwaves with deceptive ads, to provide accurate data on his actual success in placing student, and to screen his applicants better--i.e., to operate in a fashion one would expect of any conventional school.

Other Rule provisions--such as affirmation or constructive notice--have been amended to insure that while they serve their intended purposes, no students unintentionally disenroll or fail to enroll. In short, while the Rule is primarily designed to prevent unfair and deceptive practices, it will also benefit competitive schools.

C. Effect on Government Programs

The Rule should have another effect on federal and state government programs which assist students to enroll in proprietary vocational schools.

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[23] See Part I, Section IV-C F, supra.

[24] The record shows that many drop-outs occur early in courses and many are caused by the false claims of the school. See Part I, Section VI-A, supra. The record demonstrates that schools extract large tuition payments from these early drop-outs. See Part I, Section VI-B and C, supra.

Federal and state governments have invested large amounts of money in proprietary vocational schools. The VA invests over $100 million a year.[25] The United States Office of Education estimates it will pay proprietary vocational schools $83 million this year to compensate schools for students who have defaulted on their federally insured loans. Proprietary schools accounted for 88% of all delinquent funds paid under the Guaranteed Student Loan Program.[26]

Added to the significant financial loss to the United States Treasury is the effect the Federal Government's involvement in courses of little or no vocational value has on the public's opinion of the government. Both the Veterans' Administration and the USOE are approving courses, if only indirectly, that many students find inadequate or not as represented. In addition, the USOE is even acting as a debt collector for these same schools.[27]

The Rule, by reducing drop-outs and the financial obligation of non-completers and improving placement success of graduates, should radically decrease the number and amount of defaults on Federally Insured Student Loans. Similarly, students enrolled under this program or utilizing their entitlement under the Veterans' Benefits Program will less often find schools they thought approved by the government engaging in unfair and deceptive practices and will instead find significant benefit from their federal assistance.

We have previously cited a number of officials responsible for both the FISL and VA programs who have agreed that greater consumer protection remedies are needed in this industry. They have done so for a variety of reasons, not the least of which is an attempt to preserve the integrity of the programs authorized by Congress. To the extent that the Rule succeeds in shifting incentives away from false, deceptive and unfair practices and toward improved sales, advertising, and training techniques, consumers using FISL and VA monies stand to benefit. Concomitantly, the intended purpose of both Congressional programs is better fulfilled.

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[25] _See_ Part I, Section VIII-C(1), _supra_.

[26] _See_ Part I, Section VIII-C(2), _supra_.

[27] _Id._

VI. Arguments in Opposition to the Rule

In previous sections of this Report, we have addressed many factual and policy issues raised in this rulemaking proceeding. This section isolates those arguments raised by various commentators that pertain to more general questions about the propriety of action by the Commission or the utility of rulemaking as compared to other regulatory approaches. While we have tangentially addressed some of these questions in the process of describing both the evidence in the record and certain issues raised by the proposed Rule, we believe that these questions must be isolated in order to receive focused attention by all interested persons and commentators.

By selecting out these few general issues for additional discussion, we do not intend to imply that they are of special or peculiar importance. On the contrary, we have provided this section solely because the particular arguments presented here are not conveniently addressed in any other section.

A. Existing Regulation is Adequate

Throughout this proceeding, industry representatives have argued that the Commission should not act further in this field and should, in turn, defer to existing regulatory bodies that have greater experience, expertise, or resources in coping with proprietary school problems.[1]

In previous sections of this Report[2], we have provided detailed evidence that directly rebuts the underlying premise of the argument that counsels the Commission to defer to other agencies. That premise--that existing regulation is adequate and viable--is wholly untenable. While we will not attempt to rehearse at this point our lengthy discussion of state, federal, and private forms of regulation, we do feel that it is important to briefly highlight that discussion.

The primary source of supervision and review of proprietary schools occurs at the state level. Most states have adopted some form of organic licensing law which requires an individual school to comply with certain stipulated standards as a prerequisite to obtaining a license to operate in the state. While the statutory criteria vary considerably from state to state[3], the primary objective of these statutes is to insure that schools meet minimum standards for course materials, facilities, libraries, instructors' credentials, records maintenance, ownership and management control. Although some state statutes or regulations do provide separate standards in areas like advertising, enrollment techniques, sales, refunds, and disclosures[4], the dominant theme of such statutes is directed at the state's more traditional concern--the quality of the education being offered.

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[1] See, e.g., comments of the National Home Study Council, pp. 19-34, Exhibit K-439; initial comments of the Association of Independent Colleges and Schools, pp. 16-33, Exhibit K-867.

[2] In Part I, Section VIII, supra, we addressed this question directly as it pertains to state, federal, and accreditation standards and procedures. Moreover, the detailed discussion of the prevalence of false, deceptive and unfair practices in Part I, Sections IV, V, VI and VII, supra, implies quite strongly that consumers have not received adequate relief from these practices.

Even beyond the fact that few states have seen fit to adopt the type of standards that pertain to the business and marketing practices that concern us here, the record shows that most states have been unwilling or unable to provide licensing officials with the mandate or resources to cope effectively with the abuses engaged in by proprietary schools. Limited resources are expended in insuring a modicum of compliance with multi-faceted licensing laws and few, if any, resources are available to identify and eradicate numerous instances of advertising and sales abuse.[5] Those actions which are taken seem to require the participation of the state attorney general in order to eliminate the most potent of frauds.[6]

Finally, state regulation, no matter how competent, committed, or financed, simply cannot touch the abuses and practices that originate in other jurisdictions and across state lines. Since a good portion of the practices that this report documents to be false, deceptive and unfair originate with schools that are multi-state in operation and control[7], it is impossible for state officials to cope effectively with them.[8]

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[3] See Part I, Section VIII-B, supra of this Report. The Education Commission on the States has reently proposed a model licensing law that attempts to set out uniform standards for vocational school licensing statutes. See Exhibit G-44.

[4] See Part I, Section VIII-B, supra. Consumer protection standards can also be imposed indirectly through state enforcement of statutes relating to misrepresentations and frauds. Such activity generally occurs on an ad hoc basis and consists of individual litigations brought by the state's Attorney General. A more complete discussion of such cases appears at Part I, Section VIII-B, of this Report. See also "Actions brought by State Attorneys General against Vocational Schools," Exhibit G-18, and Findings of Fact and Conclusions of Law in the case of People of the State of California v. California Career Counseling (August 19, 1974), Exhibit D-136.

[5] Id.

[6] Id.

The federal government's involvement in proprietary school education derives from the many federal subsidy and grant programs operated by various departments and agencies.[9] Precluded by statute from engaging in any direct evaluation or control over the individual schools,[10] federal agencies have generally confined themselves to supervising the efficient fiscal and procedural aspects of their programs and have deferred to other non-federal entities for "quality-control". In the veterans' benefits program, the VA has deferred to state approving agencies[11] while HEW most often has recourse to private accrediting agencies.[12]

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[7] See Part I, Sections II, IV, V, VI and VII supra.

[8] The argument that state regulation is adequate often appears in another form when industry members argue that the Commission should defer to the states as the traditional repositories of educational control and decision-making whether or not they are doing an adequate job. See initial comments of the Association of Independent Colleges and Schools, p. 16, Exhibit K-867; and the comments of the National Home Study Council, p. 26, Exhibit K-439. The staff fully concurs with these arguments insofar as they state that as a matter of discretion and policy the Commission should reserve for the states issues of educational quality and other judgments with regard to curriculum, faculty, attendance, certification, tenure and any other matter pertaining to the substance of the courses that are offered. However, the Commission has the authority under Section 5 to insure that the business practices of schools comply with the Congressional mandate to avoid and prevent unfair and deceptive acts or practices. The Rule we recommend here pertains solely to such business practices.

[9] See Part I, Section VIII C, supra.

[10] 38 U.S.C. Section 1782.

[11] In many cases the existing state licensing entity for vocational schools also functions as the state approving agency. See Directory of the National Association of State Approving Agencies, 1974-5, Exhibit G-107.

[12] In this proceeding, the accrediting agencies most directly related to proprietary vocational schools are the accrediting arms of the National Home Study Council (NHSC), National Association of Trade and Technical Schools (NATTS), Association of Independent Colleges and Schools (AICS), and the Cosmetology Accrediting Commission (CAC). See Part I, Section VIII-D, supra.

By utilizing non-federal entities, the federal programs absorb whatever deficiencies may exist in these state and private organizations.[13]

This is not to say that either the VA or HEW has abdicated its responsibility to oversee their funding programs. On the contrary, both organizations have recently put in place requirements that are aimed at improving the operation of their programs.[14] HEW now requires schools participating in the federally insured student loan program (FISL) to: provide students with a "fair and equitable" refund policy; make a "good faith effort" in providing prospective students with data on the institution, its program, and in the case of vocational schools, placement data, if available; and enroll only persons who are able to benefit from the course of study.[15] At the same time, HEW improved its standards for reviewing schools' participation in the FISL program and granted the Commissioner of Education authority to limit, suspend or terminate the participation of certain schools.[16] The VA for its part has acquired statutory directives that allow the Administrator of the VA to refuse to approve the enrollment of veterans in any course of training if the school fails to place 50 percent of its graduates,[17] uses erroneous or deceptive advertising or sales techniques, has more than 85 percent of its students enrolled under the veterans' benefits program, or engages in advertising that contains significant avocational or recreational themes.[18]

While these recent provisions are welcome additions to the respective agency programs, they are not substitutes for remedies that more directly pertain to schools' business and marketing practices and that provide relief directly to consumers. Each of these provisions is aimed at improving the operation of the respective funding programs by removing from the rolls of such programs schools that fail to meet certain minimal requirements. While it is revealing and rewarding to see both the Veterans' Administration and the Department of Health, Education and Welfare act to set refund, disclosure, and advertising constraints, their actions are not a substitute for direct remedies available to consumers. Not the least of the difficulties associated with these new thrusts by both agencies is the ambiguity that resides in phrases like "fair and equitable" refunds, "good faith efforts" to disclose placement data, and 50 percent placement of "graduates," "available for placement," in "course-related" positions.[19]

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[13] Part I, Section VIII-B & D, supra, explains in great detail the deficiencies that adhere to state licensing agencies and private accrediting groups. We discuss private accrediting groups further in later paragraphs of this section.

[14] These requirements are dicussed in detail in Part I, Section VIII-C, of this Report.

[15] Federal, State and Private Programs of Low Interest Loans to Students in Institutions of Higher Learning (February 20, 1975), 40 Fed. Reg. 7586.

[16] Id.

[17] Some of the practical and conceptual difficulties with this requirement are discussed in Part I, Section VIII-C, supra.

[18] See Conference Report to Accompany H.R. 12628, Vietnam Era Veterans' Readjustment Assistance Act of 1974, Report No. 93-1240, 1974, Exhibit A-93.

Both the VA and HEW cannot stand as useful sources for definitive consumer protection standards simply because they have not been equipped for that role. The fundamental congressional mandate is for both agencies to defer to non-federal sources for most major educational and consumer protection issues.[20] Each agency is charged with promoting vocational training by use of its grant and loan programs and each responds to the type of issues raised by this Report from the perspective of protecting its fisc. Suffice it to say that improved procedures and administrative corrections cannot substitute for the direct remedies recommended in the Commission's proposed Trade Regulation Rule.

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[19] Some of this ambiguity is explained by the broad clientele served by HEW. All its regulations pertain to all types of post-secondary schools--proprietary vocational to university level. It has modulated its requirements to meet this diverse universe.

[20] See Part I, Section VIII-C, supra. A particularly revealing look at VA deference to state approving agencies can be found in Orlans, Private Accreditation and Public Eligibility, Brookings Institute, 1974, Exhibit D-21; and A Comparative Study of Three G.I. Bills, Education Testing Service, 1973, Exhibit A-4.

HEW, for its part, continues to call for reliance on the "triangle of governance." See testimony of Commissioner of Education, T.H. Bell, before the Senate Permanent Subcommittee on Investigations (1975), pp. 279-80, Exhibit H-238. This triangle consists of HEW, state licensing officials, and private accrediting agencies, and the Office of Education argues that it must rely on the other two legs of the triangle to promote ethical business practices. Even in the light of information which shows the "triangle" to be fragile, if not inept, HEW has long been wedded to it. See testimony of Commissioner of Education, T.H. Bell, Tr. 1913.

Finally, we should mention the existence of private regulatory influences. In the proprietary school industry, as with other types of schools, accrediting organizations have been established to provide minimum standards among certain types of schools. As we have explained in greater detail in another section of this Report[21], accreditation is a voluntary process consisting of reviews by one's peers in the industry. In utilizing a purely voluntary process, the accrediting agencies hope to achieve compliance with their standards through a process of counseling and peer pressure. These agencies' most forceful tool--the withdrawal of accreditation for violation of standards--is not often applied since the very purpose of accreditation is to encourage schools to achieve the organization's standards over a period of time. Thus, abusive practices must be tolerated in the short-run in order to create the possibility for improvement in the long-run.

Accrediting agency officials candidly admit that these agencies--by virtue of design, inclination, staffing, resources, and mission--are not "policemen" in any way that would deter or detect false, deceptive or unfair business practices.[22] Indeed, it is hard to imagine how they could be. By their very nature these peer review mechanisms establish standards as long range goals. Interim violations are only measures of the degree to which the goal is being approached. Moreover, if consumer protection issues are not matters of moment, they never will appear in the goal structure in any case. Given the fact that the clientele of accrediting associations are often the very schools which engage in the practices described in this Report, it is not difficult to imagine that goals will not always be selected and interpreted in a fashion most conducive to consumers' interests.

Thus, we conclude that while the number of actors in this field seems large, the crucial question is whether any of them is designed or disposed to provide remedial relief to consumers harmed by false, deceptive or unfair acts or practices. It is an obvious fallacy to equate the mere existence of a regulatory body or agency with the actual implementation of actions that protect consumers. We have found that most existing agencies with responsibilities in the vocational school field have divergent objectives and standards, are often understaffed, and generally not equipped to offer individual consumers with adequate protections. In this regard, the longevity or tradition of an agency's participation in this field is certainly not as relevant as its actual performance in consumer protection matters.

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[21] See Part I, Section VIII-D, supra.

[22] Id.

Furthermore, the fact that a particular agency is responsible for administering a subsidy or funding program is not an assurance that the agency has either the authority or the interest to independently offer consumer relief from abusive marketing and business practices.[23] The argument that the Commission should defer to other agencies and organizations is both confusing and contradictory. Not the least of its shortcomings is its failure to explain how the widespread abuses documented in this Record have flourished under existing regulatory standards and how the Commission's withdrawal from this field would improve the ability of other agencies to cope with these abuses. The Commission provides the only prospect for interstate correction and prevention of these practices in a uniform and definitive manner.

B. FTC Action Would Promote Regulatory Uncertainty

An argument closely related to that concerning the adequacy of existing regulation concerns the extent to which the Commission's proposed Trade Regulation Rule would create confusion and duplication of existing regulations. Industry members have contended that an F.T.C. Rule would so confuse the industry that compliance would be virtually impossible.[24]

To a large extent, these arguments are based on some misconceptions about what the Rule's provisions say and the relationship of federal regulations to state laws and regulations. Contrary to the arguments raised by industry members, the record shows that action by the Commission will not only serve to promote certainty with regard to those areas covered by the Rule but will not create irreconcilable conflicts with other federal laws. The adoption of a national, uniform rule governing the marketing practices of proprietary vocational schools will have the effect of lessening the multiplicity of regulations to which industry members are presently subjected.

With regard to state law and regulations, the proposed Rule would preempt the cooling-off requirements presently in effect in 49 of the 50 states,[25] establish refund and cancellation principles on a nationwide basis, set standards for substantiation of certain advertising claims, and provide disclosures in a uniform format. Particularly for schools who operate in more than one state the adoption of the Rule will substantially reduce both the difficulty and expense associated with complying with multiple state laws in these areas.

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[23] We should note that both the Commissioner of Education, T.H. Bell, and the Chairman of the Senate Committee on Veterans' Affairs, Senator Vance Hartke, testified that they welcomed the Commission's initiatives in this field. See Tr. 1897 and 1909.

[24] See, e.g., comments of NHSC, p. 28, Exhibit K-439; comments of MBTI, p. 7, Exhibit K-65, comments of Robert J. Colborn, Colborn Academy of Beauty Culture, Inc., Tr. 6654; and testimony of H. H. Katz, Coyne American Institute, Tr. 8249.

[25] Testimony of Neil Offen, Direct Selling Association Tr. 7893 at 7896.

When questioned concerning the desirability of national uniform standards versus a multiplicity of state laws, the Direct Selling Association, a trade association composed of manufacturers whose goods and services are sold door-to-door testified:

> I would like to see total prevention of conflicting state statutes and particular notice provisions. We think that uniformity of printing contract forms is to the betterment and the benefit of the company in terms of printing costs and training costs and the consumer in terms of dealing with the same language wherever they are, in terms of understanding their rights....[26]

With regard to existing federal regulations, the Rule we are recommending contains no direct conflict in any area covered by the Rule. As we described previously[27] both the Veterans' Administration and the Office of Education have established regulations for the operation of the veterans' benefits and FISL programs. In its proposed form, the Rule contains three areas of potential overlap with existing VA or USOE requirements.[28]

In the first, the originally proposed Rule's requirement of reaffirmation within 10 days was in technical conflict with the VA's requirement that a veteran could not reaffirm sooner than 10 days.[29] This has been cured by an amendment to the recommended Rule which allows reaffirmation to take place at any time after receipt of the Disclosure Form.[30] Thus, veterans may hold their Form and not reaffirm these contracts until ten days have transpired and thereby allow the school to comply with both the F.T.C. and VA rules.

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[26] Id. at 7914.

[27] See generally Part I, Section VIII C(1) and (2), supra.

[28] See Part II, Section II, supra.

[29] Compare proposed 16 C.F.R. Part 438.2(d) (40 Fed. Reg. 21048, May 15, 1975) with the VA's 38 U.S.C. Section 1786. The conflict was hypothetical largely because the proposed Rule required the 10-day period to begin upon receipt of the Disclosure Form while the VA requirement began to run from the date of contracting--a period of several days prior to the mailing of the Disclosure Form. Thus, compliance with both requirements was feasible in the vast majority of cases.

[30] See Part II, Section II, supra.

The second area of possible conflict arises between the Rule's pro rata refund requirement and those of HEW and the VA. As to HEW's "fair and equitable" refund policy[31] the conflict here is wholly illusory. HEW's regulations set minimum standards for continued participation in the Federally Insured Student Loan program. They do not preclude other, more stringent, standards. In fact, they instruct the Commissioner of Education to weigh and balance certain external factors in rendering his "fair and equitable" determination.[32] Thus, a Commission finding that Section 5 required a strict pro rata refund as a matter of law would stand as the definitive statement of what fair and equitable refunds will be under the HEW regulations.

Similarly, the VA has two statutory refund policies. The one for unaccredited residence schools already requires a strict pro rata identical to the one recommended by the Rule and is thereby not in conflict with the Rule.[33] The one for home study schools applies NHSC's existing refund policy.[34] As with HEW's fair and equitable standard, however, this VA policy is a minimum to protect veterans and does not preclude a policy more favorable to veterans. Each school is free to select or comply with a policy that provides larger refunds to enrolled veterans. In that regard, the proposed Rule would not conflict with the provisions set out in U.S.C. Section 1786.

The final area of potential conflict concerns use of generalized employment and earnings information. The original Rule prohibited the use of such information as advertising copy.[35] HEW's regulations required schools to use generalized data _if_ they could not, after a good faith effort, collect data on their students' actual placement success.[36] This conflict has been reduced by the proposed Rule's amendment to allow the use of general information when track record disclosures are made.[37] Moreover, the Rule's provisions which require schools that make jobs and earnings claims to make specific jobs and earnings disclosures certainly would meet HEW's definition of a good faith effort to collect and disseminate the data under its own regulations.

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[31] _Compare_ 16 C.F.R. Part 438.2(f) (40 Fed. Reg. 21048, May 15, 1975) _with_ HEW's 45 C.F.R. Section 177.63.

[32] _Id._

[33] 38 U.S.C. Section 1776.

[34] _See_ Part I, Section VII-V, _supra_. This refund policy is contained in 38 U.S.C. Section 1786.

[35] Proposed 16 C.F.R. Part 438.2(a), 40 Fed. Reg. 21048, May 15, 1975.

[36] 45 C.F.R. Section 177.64.

For those schools which do not wish to make jobs and earnings disclosures under the proposed Rule, the Rule continues to require that they not use generalized claims in their advertising. However, even here the Rule and HEW's requirement should not conflict. HEW's regulation stipulates that a vocational school cannot use generalized data if it has available to it more specific data on its own students' placement and salary success. As the record shows, major accrediting agencies already require that member schools collect placement data on their students.[38] Since the schools covered by HEW's provisions are, by statutory requirement, predominantly accredited schools, the impact of HEW's regulation is to require the release of specific track record data already maintained by those schools. In this regard, there is no conflict between the agencies' positions.

Moreover, even in those cases where an accrediting agency does not require the maintenance of track record data--*e.g.*, home study schools--the record shows that most schools will be required to maintain this data by the Veterans' Administration.[39] Under the VA's fifty-percent placement requirement[40] all schools wishing to continue participation in the veterans' benefits program must survey their students to determine whether 50 percent have obtained employment in jobs related to their training. Since most large home study schools participate in this program[41], they will have available their VA survey results to satisfy the requirements of HEW's regulation.

In order to find any conflict between the proposed Rule and HEW's regulation one must first find a school that: (1) is vocational in nature and purpose; (2) does not engage in job and earnings advertising; (3) is not required by state law or accrediting association standards to maintain track-record data; and (4) does not participate in the veterans' benefits program and thereby is not conducting surveys of its students. We find no evidence on the record which would allow us to conclude that this combination of factors is sufficiently frequent to warrant an alteration in the proposed Rule's format. Given the compelling record evidence on the misuses of generalized information[42], it is our view that the Commission must act to cure these misuses and prevent their reoccurrence in the future.

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[37] *See* Part II, Section II, paragraph (a), of the proposed Rule *supra*.

[38] *See* Part I, Section VII-C, *supra*. These requirements are at times duplicative of standards already established by state licensing laws. *See* Part I, Section VIII-B, *supra*.

[39] *See* Part I, Section VIII-C(1), *supra*.

[40] 38 U.S.C. Section 1673(a)(2).

[41] *See* Part I, Section VIII-C(1), *supra*.

In sum, the proposed Rule, instead of creating additional layers of regulation, will create more uniform standards for the areas it touches upon. In large part, existing federal regulations interface closely with the Rule and compliance with the rule will bring compliance with these regulations.

C. Relationship of Proprietary Vocational Schools, Public Schools and Community Colleges

Representatives of the proprietary school industry often raise another issue which they argue calls for the Commission to stay its hand in this field. Despite the documentation in this Report of the widespread use of false, deceptive and unfair practices by proprietary schools, these representatives ask the Commission not to adopt the proposed Rule because jurisdictional limitations would prevent its application to public schools and colleges. The proprietary school industry argues that it is "unfair" to limit the scope of these remedial provisions to its own members.[43]

Although the argument is generally offered in a unitary format, it actually has three major components:

a. Public vocational schools and community colleges engage in many of the same forms of advertising and solicitation practices as do proprietary schools.[44]

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[42] See Part I, Section IV-C(2), supra.

[43] See, e.g., comments of AICS (supplemental) p. 18, Exhibit K-867; comments of NHSC, p. 21, Exhibit K-439; comments of the National Association of State Administrators and supervisors of Private Schools, p. 6, Exhibit K-784; comments of Control Data Institute, p. 2, Exhibit K-862; testimony of Melvin Rashen, IBA Prestige Beauty Colleges, Tr. 6624.

[44] Comments of NATTS, p. 20, Exhibit K-520; comments of AICS (supplemental), p. 19, Exhibit K-867; comments of NHSC, p. 47, Exhibit K-439; comments of M-W Corporation, p. 10, Exhibit K-863; comments of MBTI, p. 10, Exhibit K-65; comments of Control Data Corporation, p. 2, Exhibit K-862; testimony of Lawrence R. Howard, Michigan Organization of (Continued)

b. Requiring proprietary schools to disclose dropout, salary, and placement data and other information without requiring the same of public schools will deceive consumers since there will be no means by which to compare the two types of schools.[45]

c. It is unfair to subject only part of an industry to comprehensive regulation while at the same time leaving another portion, the public schools, unregulated, particularly since the two parts are competitors and rivals.[46]

The underlying premise of these arguments is that proprietary schools and public schools are essentially the same types of entities and thus deserving of identical treatment. Since both sectors offer vocational courses, it is argued, both must be subject to identical regulatory consideration. Before addressing specific elements of these arguments, we believe is important to address this underlying premise.

The record shows quite clearly that junior colleges, community colleges, and other public schools possess several characteristics that distinguish them from proprietary vocational schools. These distinctions reflect the fundamental differences between the two sectors.

The first of these distinctions is the cost to the consumer. Generally, the amounts charged for public vocational education are very small and at times public schools require no student fee.

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[44] (Continued)

Vocational Schools, Tr. 7451; testimony of Walter C. Greenly, Pacific Northwest Business School Association, Tr. 8403.

[45] Comments of NHSC, p. 87, Exhibit K-439; comments of NATTS, p. 72, Exhibit K-520; comments of AICS, p. 61, Exhibit K-867; comments of MBTI, p. 3, Exhibit K-65; testimony of Joseph A. Clark, Indiana Private School Accrediting Commission, Tr. 6375; testimony of Leroy Broesder, Spartan School of Aeronautics, Tr. 7529.

[46] See, e.g., comments of NATTS, p. 17, Exhibit K-520; comments of AICS (supplemental), p. 8, Exhibit K-867; comments of NHSC, p. 47, Exhibit K-439; comment of Bell & Howell Schools, Inc., p. 50, Exhibit K-856; comments of MBTI, p. 2, Exhibit K-65; comments of Control Data Corporation, p. 2, Exhibit K-862.

In many, if not most instances, the amounts per course are small enough that the courses would be exempted by the $100 exclusion provided in the proposed Rule. Even in those instances in which tuition expenses for public vocational education courses exceed $100, they still do not approach the investment required in the private sector.[47] Hence, even if one were to assume that public schools engage in the same enrollment abuses as do their private counterparts, the potential injury to consumers is significantly less. As we have described previously, one of the attributes of proprietary school courses which argues for remedial relief for consumers is the extent of financial loss associated with an inappropriate choice of schools--whether or not the school was responsible for the erroneous choice by virtue of its advertising copy and sales pitch.[48] These consumer losses are simply not present in the public school sector.

A second distinction relates to the format of public school courses. Public vocational school courses are divided into segments of limited duration--an academic quarter or semester.[49] Upon conclusion of each term credits are accumulated by the student and can be built upon at some time in the future. By way of contrast, private vocational school offerings are generally non-transferrable from school to school, and are basically an all-or-nothing proposition. The student dropping out of a proprietary vocational course half way through a one-year course has totally lost his investment. This conclusion is one shared by many including state officials, such as the Ohio Attorney General:

> Generally speaking, a regular school degree requires two or more years of instruction including a required number of individual courses. A proprietary school, on the other hand, usually gives less than one year of instruction at the end of which a degree is awarded to the student. Should a student withdraw from a regular school after successful completion of a year of instruction, he may later re-enroll and apply earned course credits toward a degree. The proprietary student who prematurely withdraws receives no comparable benefit, because of the single course structure of the proprietary school program.[50]

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[47] See Part I, Section II-B(4), supra. See also testimony of Jon Tirrel, American Association of Community and Junior Colleges, Tr. 2187.

[48] See Part I, Sections II-B(4) and VI-C, supra.

[49] See, e.g., comment of William J. Brown, Ohio Attorney General, Exhibit K-860.

[50] Id. Proprietary schools pride themselves on this single-minded directness of their courses. See Part I, Section II-A, supra.

Again, the consumer loss in the proprietary sector is exponentially greater than in the public. The all-or-nothing approach of proprietary school curricula augurs poorly for the student who fails to complete his course or decides to move on to different courses of instruction.

Third, the differences in tuition cost and credit transferability implicitly raise a more fundamental distinction that separates proprietary schools and public junior and community colleges. The record shows that the mission of public schools is to provide broad-based curricula at public expense to individuals who do not want to attend, or are undecided about attending, traditional four-year colleges and universities.[51] While these schools often offer vocational courses, they also offer courses in traditional liberal arts subjects which can later be applied to college degrees. Thus, the question of credit transferability is an active and real concern in these institutions and to the students who attend them. This is in sharp contrast to the limited curriculum coverage and mission of proprietary schools.[52] These basic differences in course structure, length, and mission are integral to understanding the differences among these schools.

A final characteristic that distinguishes proprietary schools and public schools is the mechanism available to oversee the activities of the respective schools. Public schools are the creature of the state and are controlled and managed by elected officials or persons appointed by and responsible to elected officals. Decisions regarding course content, enrollment practices, tuition fees and other elements of these courses are made by individuals who must be responsive to the demands of the community or its elected officials.[53] Proprietary schools, on the other hand, are based in the market and must find their guidance in market forces. While under normal circumstances the market may be expected to provide certain constraints on the acts and practices of proprietary schools, the record shows that the market has failed to operate effectively here.[54]

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[51] See statement by J. Tirrell, Vice President for Governmental Affairs, American Association of Community and Junior Colleges, Exhibit C-168; see also testimony of J. Tirrell and W. Meardy, Tr. 2187.

[52] See Part I, Section II-A, supra.

[53] See testimony of J. Tirrell, Vice President for Governmental Affairs, American Association of Community and Junior Colleges, Tr. 2187. Mr. Tirrell noted the following factors:

1. Most of our colleges need a local vote of the people, as a result of studies of needs and a plan, before they are established.
2. Most have a locally elected Board, although some are appointed (most often by the Governor).

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While these different control mechanisms may each suffer from disabilities that reduce their effectiveness, it is our view that the very existence of public decision-making bodies in the day-to-day operation of public schools is an important factor in distinguishing public and proprietary schools. Even if the Commission had jurisdiction over public schools, the presence of these public bodies would argue for a wholly separate evaluation of the issues raised by potential F.T.C. action.

Putting these basic distinctions aside, the record shows that proprietary and public vocational schools do not engage in the same or similar advertising, solicitation and enrollment practices. In large part the differences in these practices stem from the different missions of both schools and the distinct attributes cited above. Whatever the reasons, the advertising, solicitation and enrollment practices of community colleges vary significantly from those employed by proprietary schools. Advertising copy utilized by the two types of schools is dissimilar. Instances in which community colleges have utilized unsubstantiated employment and earnings claims, though found in the record, are infrequent. Compared to the sophisticated, extensive and intensive advertising utilized by proprietary schools,[55] the brochures and advertisements run by public schools are subdued in both number and tone.[56]

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[53] (Continued)

3. Most have a local tax, and thus hard local scrutiny.

4. Many now have assistance from the State and thus additional review.

5. Most of our occupational programs have local advisory committees from business, industry, labor and the community at large in establishing, reviewing and in some cases terminating such programs.

[54] See Part II, Section V, supra.

[55] See Part I, Section IV, supra.

[56] See exhibit attached to the comments of NATTS, Exhibit K-520. See also comments of F.L. Johnson, University of Wisconsin Extension University, Exhibit K-147; testimony of J. Tirrell, American Association of Community and Junior Colleges, Tr. 2187.

The critical difference, however, concerns the use of commissioned salesmen. The use of commissioned salesmen[57] and sophisticated psychological sales ploys such as the negative sell[58] within the proprietary sector have been clearly documented. Within the public sector the use of high-pressure salesmen is non-existent. Academic counseling, career counseling and other forms of student assistance prevalent in community colleges[59] stand in stark contrast to the so-called "admissions counselors"[60] of the proprietary schools who are usually commissioned sales personnel. Proprietary school members argue that even a salaried admissions officer has incentives to over-zealously enroll students. But it is clearly a confusion in thinking to equate admissions officers with commissioned salesmen. We find no contests, quotas, negative sells, closing techniques, personally developed leads, conversion ratios--or anything even resembling this in the community college sector.

With regard to the claim that requiring certain data to be disclosed by proprietary schools without a concomitant requirement for public schools will serve to deceive consumers, some relevant factors need to be highlighted. The proposed Rule calls for the making of certain disclosures as a means of correcting and preventing certain false, deceptive and unfair practices which currently disrupt the proper functioning of the market. The present state of misinformation in the market for proprietary courses, the degree of misrepresentation prevalent, and the calculated withholding of information necessary to make a rational purchase decision mandate the need for such disclosures.[61] These factors simply are not present in the public school sector.

Moreover, even in the absence of these factors, community and junior colleges do keep placement and drop-out data and make it freely available to interested persons.[62] Furthermore, to the extent that these schools offer courses that are deemed to fall within the scope of the VA and HEW regulations on the maintenance and/or disclosure of placement data[63] the type of data covered by the Rule will be made available by them. There is no obstacle in the Rule which would prevent a proprietary school from publicizing the comparable data of his perceived public school competitor. If the two entities are engaged in the intense competition portrayed by the industry, the proprietary school will have a strong incentive to seek out the available public school data and publicize any favorable comparisons.

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[57] See Part I, Section V, supra.

[58] See Part I, Section V-C, supra.

[59] See, e.g., testimony of Dallas Smith, member of governing board of American School Conselors Association, Tr. 4290.

[60] See Part I, Section V-C(1), supra.

[61] See Part I, Section IV-C(5), supra.

[62] See, e.g., testimony of D. Lund, National Advisory Council on Vocational Education, Tr. 2511, 2524-25.

In summary, we do not find any significant reasons presented which would justify the Commission's staying its hand with regard to proprietary school abuses because the Rule's coverage does not (and cannot) reach to public schools. We should also note that the primary assumption made by some proprietary schools--that they are in direct competition with public junior and community colleges--is subject to some dispute. The record does not definitively demonstrate that competition does in fact exist between the two sectors.

While proprietary school representatives equate the mere offering of occupational courses with the existence of competition, the record shows that no logical or necessary connection exists between the two. Indeed, the evidence seems to indicate that students think of proprietary schools and community colleges as two separate entities--one provides short-term single purpose courses and the other provides long-term multi-purpose liberal arts curriculum.[64] As one expert testified:

> The evidence that I have seen shows that few students who are considering postsecondary education look at a proprietary school as one possibility while also looking at a nonprofit school as another possibility....[T]he evidence I have seen in Oregon suggests that students who are interested in going to postsecondary education choose the type of school. I want to go to a community college or I want to go to a proprietary school.[65]

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[63] See 38 U.S.C. Section 1673(a)(2) and 45 C.F.R. Section 177.64. There is no evidence available which indicates the extent to which junior and community college courses will be deemed "vocational" for purposes of the VA and HEW regulations.

[64] See Part I, Section II-A and III, supra.

[65] Testimony of J. Wich, University of Oregon, College of Business Administration, Consultant to Career Information Systems, Tr. 4216.

Once the consumer has decided the nature of the education which he desires, the two types of institutions are not functional competitors. This view of the differing attitudes of proprietary school students vis-a-vis community college students is one frequently advanced by the various proprietary accrediting associations themselves as well as by many individual proprietary schools. Typical of this attitude is the comment of one chain of proprietary schools concluding that:

> Our student has voluntarily chosen not to attend or continue in a 2 or 4 year college or university program. She is primarily interested in the...field as a vocation--not avocation--and is pursuing a short term comprehensive program leading to the opportunity to obtain employment....[66]

Thus, it seems that proprietary schools and community colleges exist to serve distinct needs. This is reflected in their costs, curriculum, class size, length of classes, advertising and solicitation practices, and oversight mechanisms. We are not persuaded that the Commission--in the face of record evidence demonstrating substantial abusive practices in the proprietary school industry--should forego remedial action based on unfounded claims of public school abuse or competition.

D. Case-by-Case Adjudication Rather than Trade Regulation Rule

Industry members often argue that the Commission should abandon its industry-wide effort to proscribe unfair and deceptive acts and practices and turn its resources to the pursuit of individual respondents who engage in the most obvious and blatant deceptive practices.[67] At times this appears in the form of a suggestion that the Commission move to enforce its 1972 Guides in individual litigations.[68] At other times it appears in the form of a question--why go to all the trouble of documenting these many false, deceptive, and unfair practices if the Commission is not going to act to prohibit them directly?[69]

The simplest and most direct response to these arguments is that the Commission has tried its adjudicative mechanisms in this field and found them to be insufficent and inadequate. We have previously described or cited numerous complaints and orders issued by the Commission against scores of accredited and unaccredited institutions, both home study and residence.[70] Despite the extraordinary commitment of time and resources, these cases do not seem to have fostered the type of voluntary compliance from other industry members that one would expect from major litigation.[71] The record clearly shows a continuation of the acts and practices the Commission has found repeatedly to be offensive, and litigation in this industry has only invited more litigation to secure the principles originally sought.[72]

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[66] Comment of Bryman Professional Careers Institute, Exhibit K-591.

[67] See, e.g., testimony of P. Barton, LaSalle Extension University, Tr. 8052 at 8086.

[68] See, e.g., testimony of Bernard Ehrlich, Counsel to NATTS, NHSC, and CAC, Tr. 9293.

[69] Id. Tr. 9272.

Related to this point is another factor of importance in evaluating the arguments that the Commission should rely solely on litigation efforts. In part, each of these arguments is predicated on the claim that the abuses which are occurring are limited in number and are restricted to a handful of offending schools.[73] The record shows quite clearly, however, that violations of Section 5 are both extensive and intensive in this industry and involve all types of schools--accredited and unaccredited, home study and residential, small and large.[74] Since we have already devoted an entire subsection of this report to the question of the scope and extent of the practices the record shows to be in violation of Section 5 of the F.T.C. Act,[75] we will not duplicate that discussion in full here. However, we believe it is important to emphasize again that those who have taken the time and expended the resources to go beyond the superficial appearances on solitary abuses have verified what is clear from this record--that false, deceptive and unfair practices cut across all segments of this industry irrespective of type of course, curriculum, school size, or method of instruction. In addition to our own record evidence, we note the independent investigations of the Department of Health, Education and Welfare[76], the Postal Department[77], state attorneys general[78], private class actions[79], newspaper articles, exposes, and investigatory reports[80] and inquiries by Congress and other federal

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[70] See Part I, Sections I, IV and V, supra.

[71] We should also note that litigation efforts by various attorneys general, state agencies, the Post Office Department and private individuals have also failed to make a significant dent in proprietary school practices.

[72] See the listing of new cases in Part I, Section I, supra.

[73] See, e.g., testimony of Robert A. Barton, President, LaSalle Extension University, Tr. 8052 at 8085; testimony of Bernard Ehrlich, Counsel to NATTS, NHSC and CAC, Tr. 9272 at 9287.

[74] See Part I, Section IV(D), supra.

[75] Id.

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[76] See, e.g., "Task Force Review of Florida Proprietary Vocational Schools Participating in the Guaranteed Student Loan Program," Office of Education, HEW, Region IV, Atlanta, Georgia (April 1975), Exhibit H-201; audit of Marsh-Draughon student files by Department of Health, Education and Welfare, Region IV, Atlanta, Georgia (May 24, 1974), Exhibit H-192; audit on Alverson-Draughon Business College, Birmingham, Alabama, by the Department of Health, Education and Welfare, Region IV (December 31, 1974), Exhibit H-193; testimony of J. Vogel, Supervisory Collection Office, HEW, OGSL, Chicago Regional Office, Tr. 7758.

[77] See, e.g., several mail fraud indictments of correspondence schools, U.S. Postal Inspector, Exhibit D-110.

[78] See, e.g., comment of William J. Brown, Ohio Attorney General, Exhibit K-860; testimony of A. Epstein, Special Investigator, Consumer Protection Division, Attorney General's Office, Tr. 167; testimony of D. Harper, Acting Director Division of Consumer Affairs, New Jersey, Tr. 1530; testimony of L. Glich, Office of the Attorney General of Maryland, Tr. 3018; testimony of Diana Woodward, Deputy Attorney General, Division of Consumer Fraud, California Attorney General's Office, Tr. 4460; testimony of Bruce A. Craig, Assistant Attorney General, State of Wisconsin, Tr. 7051; testimony of Beatrice Heveran, Assistant Attorney General, State of Illinois, Tr. 7358; testimony of Lewis Winarshky, Assistant Attorney General, State of Ohio, Tr. 8540.

[79] See, e.g., San Mateo County Legal Aid Society press release: Class Action Consumer Fraud Suit Against Career Academy and U.S. Commissioner of Education (June 26, 1974), Exhibit G-113; complaint filed against Career Enterprises, Inc., in Superior Court of California and U.S. District Court (Kansas), Exhibit D-266; testimony of John C. Hendrickson, Attorney to former Greer Technical Institute students, Tr. 364, Tr. 3988, Tr. 8790; testimony of Sonja Soehnel, Attorney, San Mateo Legal Aid, Redwood City, California, Tr. 3988; testimony of Hollis Young, Attorney, Boston Legal Assistance Project, Tr. 364.

[80] See Boston Globe series on the Proprietary Vocational School Industry in Massachusetts, March 25 - April 3, 1974, Exhibit D-1; Chicago Tribune, Task Force, "Career Schools--Results Seldom Equal Promises," (June 9, 1975 - June 12, 1975), Exhibit D-284; see also testimony of William Gaines, Investigative Reporter, Chicago Tribune, Tr. 7017; testimony

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and private agencies.[81] All of these sources reflect the difficulty of attempting to cope with widespread abuse by engaging in ad hoc litigation.

Moreover, industry arguments that seek to induce the Commission to attack these problems on a case-by-case basis miss the point in another sense. To the extent that many of the abuses found in this field are the by-product of unfair refund policies and failures to disclose material facts, the use of isolated litigation would be fruitless. The problems present in this industry are by their very nature widespread and cannot be dealt with by isolated forays.

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80 (Continued)

of K. Higgins, former reporter, San Francisco Bay Guardian, Tr. 4077; "Bitter Lessons of Vocational Schools," K. McEldowney and K. Higgins, Exhibit D-236; Washington Post, "Hard Sell on Job Training," Exhibit C-39; Carl Bernstein, series of four articles on Vocational Schools, Washington Post, Exhibit D-69; Mitford, Jessica, "Let Us Now Appraise Famous Writers," Atlantic Monthly, (July 1970), pp. 45-54, Exhibit D-68; Patricia Fanning, "Costly 'Education'," National Observer, (February 15, 1975), Exhibit D-269; "The Education Hucksters," Caveat Emptor, The Consumer Protection Monthly (September 1974), Exhibit E-50; Peter Cowen, "Why Johnny Can't Work: "The Robbery Factor," The Washington Monthly (1974), Exhibit E-157; "Correspondence Schools and the Military Market," Stars and Stripes (November 1973), Exhibit E-51; "Coastway American System--How a Truck Driving School Promises and Promises...," Overdrive (August 1973), Exhibit D-37; Schools for Truck Drivers: "Most Firms Train Their Own," David Hammer, Burlington County Times (October 11, 1974), Exhibit D-316; Carper, "Career Schools Aren't Always What They Claim," Reader's Digest (June 1974), Exhibit B-9; "Beware of Fraudulent Truck-Driving Schools," The Cincinnati Post (October 29, 1972), Exhibit D-91; "Many Computer Schools Charged With Offering a Useless Education," Wall Street Journal (June 10, 1970), Exhibit E-27; Marian Ottenberg, "Pay and Be Assured a Government Job?," The Washington Star (April 16, 1972), Exhibit D-309.

[81] See, e.g., Reducing Abuses in Proprietary Schools, 27th Report, House Committee on Government Operations (December 30, 1974), Exhibit H-168; Private Accreditation and Public Elegibility, Brookings Institution (1974), Exhibit D-21; Report of the Subcommittee on Education Consumer Protection of the Federal Interagency Committee on Education, 1974-1975, Exhibits C-2 and H-95; Guaranteed Student Loan Program, hearings before the Permanent Subcommittee on Investigation, Senate, 1975, Exhibit H-238.

For example, the record demonstrates that very few schools disclose drop-out and placement information to prospective students[82], only a small number of schools give pro rata refunds[83], no one provides track record information in their advertising[84], and reaffirmation periods are only available for veterans enrolling in home study courses.[85] In this sense, industry compliance with the standards required by Section 5 is almost wholly nonexistent. Litigation would not improve this picture.

The question for the Commission is how to obtain most efficaciously the greatest benefits for consumers given limited enforcement resources. In that regard, the use of the trade regulation rule format offers significant advantage over litigation. While the precedential value of any case could be readily and seriously eroded by idiocyncracies of the respondent, the facts presented or the legal theory pursued, rulemaking sets bright-line standards for all to see and follow in the future. By establishing precisely what is required, the trade regulation rule will allow each industry member to fashion its behavior accordingly and to be assured that all his competitors are subject to similar requirements. The ambiguity inherent in trying to decipher whether the Section 5 theory pursued in one litigated context will be followed in another evaporates when prospective standards are set for all industry members.

These advantages of rulemaking also provide the answer to industry suggestions that we respond to each false, deceptive, or unfair practice with a remedy that mirrors the practice. The argument states, for example, that if schools falsely claim that enrollments are limited, the Commission's remedy should be to prohibit the use of false claims of selective enrollment.

While such a remedy is feasible when applied to an individual respondent, its application on an industry-wide basis would create almost insuperable problems of oversight and eventual litigation. The rulemaking process allows the Commission to choose remedies that not only define unfair and deceptive practices but serve to prevent these practices and others from occurring. Again using our example, disclosures of drop-out rates may cast such doubt on false claims of selectivity that schools and salesmen may no longer find it advantageous to make such claims. Or if a school must provide a student with a substantial refund when the student leaves the school because of its false claim of selectivity, the school's incentives to utilize the claim are markedly reduced.

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[82] See Part I, Sections VI-A(4) and VII-B, supra.

[83] See Part I, Section VI-B, supra.

[84] See Part I, Section IV-B, supra.

[85] See Part II, Section IV-A, supra.

Moreover, a trade regulation rule offers greater potential to enhance compliance with and enforceability of the precepts of Section 5 as defined by the Commission. While individual litigations have been weakened by minimal voluntary compliance by other firms not subject to litigation, a trade regulation rule will set industry-wide standards at a single point in time. Rather than attempting to define, uncover, and remedy numerous individual false, deceptive or unfair practices as they arise, the Commission will be able to devote its attention to potential violations of the standards set by the Rule.

The proposition that a trade regulation rule, by offering bright-line standards, enhances the potential for compliance and enforceability raises a related issue. Some industry representatives have argued that the Commission lacks the necessary manpower and resources to effectively enforce the proposed vocational school trade regulation rules.[86] That argument fails for a variety of reasons. In the first instance, enforcing compliance with a trade regulation rule will be far easier and less expensive than bringing numerous individual litigations. By setting out discernable standards of conduct, industry members will be able to ascertain and measure the standards which must be applied to their practices. The uncertainties raised by retroactive application of fluctuating factual and legal interpretations in adjudication will be removed.

Furthermore, the proposed Rule has been drafted to avoid ambiguous words and phrases which might ordinarily call upon the Commission's compliance investigators to determine whether a claim was "false", a refund "fair and equitable", a dislcosure "material" or "clear and conspicuous", and an effort "in good faith", or any remotely similar concept. The Rule prescribes in precise language not only the nature of disclosure, refund, and cooling-off requirements, but the manner in which the requirements are to be met.[87] In this sense, compliance will be a fairly straightforward determination.

Furthermore, the proposed Rule has sought to reduce any compliance burden by eliminating from the scope of the Rule a number of small schools and schools that utilize certain types of manpower training programs. The Rule does not include within its coverage students who attend courses that are selected and paid for by employers, unions, or others[88], courses that cost less than $100[89], schools with less than 75 enrollees per year[90], courses consisting of two-year programs of study generally acceptable towards a full bachelor's degree[91], and courses that are purely recreational in character.[92] These limitations on the Rule's coverage will allow the Commission to focus its compliance efforts where needed.

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[86] See, e.g., testimony of W. Goddard, Executive Director, NATTS, Tr. 9185-86; initial comments of AICS, pp. 14, 28, Exhibit K-867; comments of NHSC, pp. 34-35, Exhibit K-439; National Association of State Administrators and Supervisors (NASASPS) p. 6, Exhibit K-784.

[87] See the description of the proposed Rule's provisions in Part II, Section III, supra.

Finally, we are somewhat surprised at an industry argument that assumes widespread non-compliance with any final Rule promulgated by the Commission. We are more sanguine than industry representatives about the degree to which individual schools will readily comply with the Commission's Rule without recourse to full law enforcement and compliance activity.

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[88] See definition of "buyer", Part II, Sections II and III, supra.

[89] Id. See definition of "course". There are certain limitations on this $100 exemption.

[90] Id. See definition of "seller".

[91] Id. See definition of "course".

[92] Id. See definition of "course".

VII. The Presiding Officer's Report

Section 1.13(g) of the Commission's Rules of Practice requires that the staff's report to the Commission take into account the presiding officer's findings and conclusions with regard to designated issues. The presiding officer has produced his report containing his findings and conclusions and in this section of the Report we will respond accordingly.

Before proceeding, we wish to emphasize several points. First, the questions raised by the presiding officer's report have all been previously addressed in other portions of this Report. By responding to them again here we will be brief. We do not intend for this section of our Report to be a comprehensive recapitulation or summary of all the factual and policy arguments made previously.

Second, in his report the presiding officer made numerous observations, some of which have been couched in language that appears to embody a factual or policy conclusion. As he stated in his introductory remarks, responding to the designated issues often called for elaboration beyond the simple issue itself. Where appropriate and helpful to the Commission's deliberations we have commented on those conclusions which go beyond the issues designated by the Commission and the presiding officer.

Finally, where the presiding officer's conclusions and statements do not warrant further comment, we have merely noted the statement and provided references to those places in the Report where we have already addressed the question. Each statement of the presiding officer is set out in the order in which it appeared in his report followed by any discussion required by the staff.

1. With regard to the adequacy of State regulation, there is nothing in the record which would interfere with the Commission's right or duty to act.[1]

2. With regard to the adequacy of accrediting commissions, there is nothing in the record which would interfere with the Commission's right or duty to act.[2]

3. The Commission should give careful consideration to a possible absolute exemption for all cosmetology and flight schools.

The Rule we are recommending has complete exemptions for schools which enroll less than 75 students each calendar year or whose charges to students total less than $100 per student per year.[3] We estimate that such exemptions will succeed in removing from the scope of the Rule approximately half of all proprietary schools and perhaps as many as 66 percent of flight and cosmetology schools.[4] Moreover, the definition of "buyer" now excludes any person enrolled in a program where that person neither selects the school to be attended nor pays for the course with his own funds.[5] This exclusion should serve to remove from the coverage of the Rule numerous persons using vocational rehabilitation programs such as the Manpower Development Training Program. The MDTA is a program much used by proprietary cosmetology schools.[6] Finally, the definition of "course" has been rewritten to clarify the fact that only vocational courses are covered by the Rule and that two-year courses with credits acceptable toward collegiate degrees are likewise not within the contemplation of the Rule.[7]

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[1] Part I, Section VIII-B, and Part II, Section VI, supra.

[2] Part I, Section VIII-D, and Part II, Section VI, supra.

The rationale for these exemptions is twofold: (1) exclude from the requirements of the Rule those schools whose impact on the market is limited by virtue of their small size; and (2) lessen the Commission's compliance burden by removing numerous small firms thereby allowing the Commission to focus on schools with more intensive and extensive markets. To this extent we agree with the presiding officer.

However, we do not feel that it is wise to exempt any generic classification of schools. Such an exemption would have several severe flaws. First, in order to be readily enforceable the exemption would have to be concise and definitive. An exemption for all "cosmetology" schools, for instance, would require the Commission to define with precision what a cosmetology school was. There is nothing on the Record to indicate that this would be a facile exercise.

Second, the presiding officer recommends consideration of the exemption partially because of an existing scheme of state licensure for cosmetology schools and federal oversight, through the Federal Aviation Administration, of flight schools. We do not see how--in light of the presiding officer's earlier statement with regard to existing modes of regulation--the existence of any other regulatory schemes is grounds for the Commission to stay its hand under its own statutory responsibility.

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[3] Part II, Sections II and III, supra, and Definitions.

[4] Part I, Section II-B(3), supra.

[5] See definition of "buyer," paragraph 438.1(a), supra.

[6] See, e.g., testimony of A. Ratner, S.W. Beauty College, Tr. 3289-90; testimony of J. Bagnario, State Representative, Washington State, Tr. 4884.

[7] See definition of "course," paragraph 438.1(c), supra.

This, in turn, raises the third problem with the presiding officer's recommendation. There is no evidence that either cosmetology or flight schools offer any of the remedies proposed in this Rule. Employment and earnings advertising is available for use; no dislosures are made; absent a state requirement, no cooling-off period is given; certainly, no affirmation is available unless one is a veteran; and pro rata refunds are not made.[8] While we could understand an exemption that turned on the availability of these remedies, we do not comprehend one that ignores their availability altogether for a whole class of schools.

In this regard, we believe it is preferable for the Commission to exclude small schools on the grounds that their impact is minimal and their effect on the Commission's compliance responsibility large than to grant an exclusion which creates the implication that the Commission has approved the activities of a whole class of schools.

4. Competition between proprietary vocational schools and public community and junior colleges exists.

Since we have already addressed this question in some detail previously,[9] we will not belabor the point here. Suffice it to say that the mere offering of vocational courses by two distinct institutions need not amount to direct competition. It is difficult to imagine how a two-year program at a community or junior college is to be considered on a par with the brief courses offered by a proprietary school or how a prospective student would consider the two interchangeable. Indeed, the proprietary schools themselves boast of their short-term, single-objective, intensive courses and how these courses avoid any of the liberal arts orientation of the public schools.[10]

However one resolves this question, we must concur with the presiding officer's conclusion that the Commission must act within its jurisdictional responsibilities to cure the abuses it finds there.

5. Vocational schools present a grave problem of consumer protection and the record shows a substantially large number of students all over the country who are being victimized.

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[8] Indeed, the Cosmetology Accrediting Commission's refund policy is one of the most onerous of all refund requirements. See Part I, Section VI-B.2, supra.

[9] See Part II, Section VI-C, supra.

[10] See Part I, Section II-A, supra

We fully agree with the presiding officer that false, deceptive and unfair practices engaged in by proprietary schools are widespread and are not confined to any one type or size of school.[11]

6. Consumers enroll in proprietary vocational schools for job-related reasons.[12]

We should note that for those few schools who do not have job or career-directed courses, an exemption has been provided in the definition of "course."[13]

7. Misrepresentation and sophisticated, high pressure sales practices are widespread in the vocational school community.[14]

We fully agree with the presiding officer here. We would also like to point out that in rendering his judgment on this question of the extent of abusive practices, the presiding officer described in detail the vulnerable nature of a student/consumer subjected to these practices. His description comports with our own.[15]

8. Use of generalized claims is an enduring theme employed on a widespread basis by all types of schools.[16]

9. Consumers subjected to generalized claims conclude that (a) jobs are available in the occupational area for which training is being offered; (b) the particular school can train them to qualify for those jobs; and (c) the school has a track-record to substantiate its claims.[17]

10. A total prohibition on truthful use of generalized information would impede the flow of valuable information to consumers.

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[11] See Part I, Sections IV-D, V-C, VI-A, B and C, VII-D and E, and Part II, Section V, supra.

[12] See Part I, Sections III-E, IV-B and VII-A, supra.

[13] See Part II, Section III, and definition (c), supra.

[14] See Part I, Sections IV, V, VI-A and VII-B, supra.

[15] See Part I, Section III, supra.

[16] See Part I, Section IV-B(2), supra.

[17] See Part I, Sections III-E and G, IV-B, V-C, and VII-B and C and Part II, Section IV-B, supra.

The presiding officer's analysis has, to some extent, avoided the issues that are directly raised by the use of generalized claims--under what circumstances can generalized data be "truthful" and how "valuable" is generalized data if it is not "truthful." In this regard, his conclusion has merely restated the proposition originally found in designated issue number 5.

The record shows that generalized data, when used in advertising media, can never be fully accurate without some form of qualification. The preparation and generation of manpower projections is a complex process and a full understanding of this data requires a working knowledge of the process.[18] Is it "truthful" for a school to advertise, for example, that "computer programmers are in big demand" when it does not simultaneously say that this projection is an educated guess, or that there is already an adequate supply of programmers, or that employers prefer two years of experience, or that the demand is large in one area but non-existent in another?[19] It is little wonder that generalized manpower and salary projection data is viewed as a tool of counselors and specialists, not the source for media copy.[20]

Moreover, the presiding officer's conclusory references to "valuable" and "truthful" wholly ignores his own previous finding that students construed generalized claims to mean that attendance at the advertising school will lead to a job in the field. How "valuable" is a generalized claim that "T.V. repairmen earn large incomes" if the advertising school rarely succeeds in having its students placed in T.V. repairman jobs? Failure to substantiate these claims makes them false, deceptive and unfair on their face and the record shows few schools can substantiate their claims precisely because of the dismal placement rates of most schools.[21]

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[18] The Department of Labor spends over 20 pages describing the technical, statistical and economic assumptions of its Occupational Outlook Handbook. See comments of the Department of Labor, Exhibit K-623.

[19] Notice, for example, that California's state-wide projections of manpower needs are reported on a city-by-city or county-by-county basis and are changed every three months. This format is followed because of the rapidity with which such data may change and the differences that may exist from one locality to another. See the series of California Manpower Report at Exhibits C-93 through C-103.

[20] See Part II, Section IV-B, supra.

[21] See Part I, Section VII-D, supra.

The question for the Commission is not whether generalized information is "valuable" in some abstract sense but whether the Commission can fashion a remedy that will reduce or eliminate the deceptions that adhere to such claims when used by particular schools in their sales approach. We have recommended that such claims be accompanied by disclosures that we believe will serve to reduce the false, deceptive and unfair elements in such claims.[22]

Since we have recommended that the Commission not ban generalized claims altogether, we do not feel the necessity to respond to the presiding officer's attempt to describe the scope of the Commission's legal authority if a total prohibition were pursued.

11. The Record clearly supports the need for the disclosure of placement data.[23]

12. Schools cannot collect placement data for each and every student.

Before responding directly, we note that so much of the presiding officer's difficulty with data collection that rests on the inclusion of non-starts in the data has been alleviated by the elimination of non-starts from this portion of the Rule.[24]

The record shows that for a variety of reasons schools can and do collect placement data almost universally on former students and can do so quite inexpensively. A full discussion of this finding appears above.[25] While we do not think that any more need be said on that issue alone, we do feel constrained to mention a fact that many commentators seem to miss--the Rule only requires substantiation of placement for those students the school has claimed to have placed. There is no requirement that the school track down every past enrollee.

Moreover, the Rule has been structured to require schools to make placement disclosures (and thereby keep placement data) only if they make placement claims. There is no absolute requirement to keep placement data or disclose placement data.

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[22] See Part II, Section IV-B, supra.

[23] See Part I, Sections III-E, IV-B, V-C, VII-B - F and Part II, Section IV-C, supra.

[24] See Part II, Section III, definition of "enrollee" and 438.2(b), supra.

[25] See Part I, Sections VII-F(1) and (2), supra.

13. The record shows that salary data can be obtained by proprietary schools.[26]

14. Students would be interested in knowing the placement record of schools as such without limitation to the metropolitan area or state in which the advertising was run.

The requirement that residential schools' placement claims reflect the placement rates of students where the advertising is disseminated has been eliminated.[27]

15. The only fair burden to impose on schools would be to collect and disclose information on its graduates only.

The Rule does not require any school to collect any placement data on students who did not graduate. If the school knows of drop-outs who obtained jobs, it can count those students as placed. But there is no requirement to search out drop-outs. It is not unreasonable to require schools who wish to represent their drop-outs as obtaining related jobs to provide some substantiation for this claim.

The Rule does require that one line on the Disclosure Form be devoted to the ratio of those placed to those initially enrolled. As we have stated before,[28] this disclosure is required to add some perspective to the other disclosures required by the Rule. Since drop-out rates in this industry can be so significant, a disclosure of those placed as a ratio of all initial enrollees is extremely important. For example, a school which places 10 out of 20 graduates has a 50 percent ratio of placement to graduates. But if 80 students had dropped out before graduation, then its ratio of placement to total enrollees is 10 percent. Both figures are material to the student's decision.

The material fact a prospective student needs to know most before enrolling is his chance of getting the job he wants, not upon graduation, but upon enrollment. The question of primary importance to the prospective enrollee is what his chances are of obtaining employment. If disclosures were confined to graduates, the enrollee would assume his typical chance of obtaining a job was as good as the percentage expressed for graduates. In fact, this percentage is accurate only if the enrollee gets to be a graduate. Just as it is important for a consumer to know a course's drop-out rate, it is also critical that he know his chance of placement when the drop-out rate is taken into account.

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[26] See Part I, Sections VII-F(1) and (2), and Part II, Section IV-C, supra.

[27] See Part II, Section III, supra.

[28] See Part II, Section IV-C, supra.

The only "burden" associated with this disclosure is the time it takes to make the computation. The school has its total enrollment figures available to it in any case and if it has made jobs and earnings claims it will have placement rates as well. If it wishes to represent that drop-outs have found jobs, a requirement that it substantiate only those cases is not an unreasonable burden.

16. The proper basis for placement disclosures is to include only those who are available for placement.

In this case the presiding officer has adopted the view that schools should be required to include in their placement computations only those initial enrollees who were "available for placement". The notion is that if a student is not available to be placed, he should never appear in the placement statistics.

Since we have already addressed this point,[29] we will not belabor it further. However, we do find it somewhat disingenuous for the presiding officer to have concluded that there should be an exclusion for those not available for placement while simultaneously concluding that the concept is so elusive that "it leaves an open opportunity for manipulation" by the schools. This is an extremely crucial point which is largely glossed over by the presiding officer. How will this concept be defined? Who will define it? Are there "good" grounds for not being available and "bad" grounds? For example, many students that schools label as "unavailable for placement" are only so because they cannot get jobs. Students who enter other training or educational programs, the military, or other jobs because they despair at obtaining their desired employment on the basis of their proprietary vocational school course, are counted by schools as "unavailable for placement." Other students, on determining that a school's placement service is totally inadequate, may be considered unavailable for placement because they do not contact that placement service.

Even if only legitimate reasons were grounds for excusing the student from the placement calculations, it would be difficult to draft clear-cut and enforceable categories without significantly complicating the Rule. But, as left by itself, the "available for placement" concept is overly vague and fraught with potential for manipulation.

The presiding officer states that the key to defining availability is some indication by the student when he enrolls as to his objectives when he graduates. What happens to a student who alters his objectives? What about a student who is "unavailable" due to illness, pregnancy, change of address, continuing education, etc.--are they any less available than a student who stated his objective to be non-vocational?

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[29] See Part II, Section IV-C, supra.

Furthermore, in measuring the necessity for entering this linguistic thicket, with its potential for allowing schools to avoid altogether the disclosure rationales of the Rule, one must also consider the previously detailed evidence[30] that the vast majority of consumers enroll in these schools for job purposes. Indeed, this was one of the presiding officer's earliest conclusions. Given the fact that the issue is one relegated to so few students--i.e. those with recreational or non-job intentions upon enrollment--we recommend that the Commission not endorse so large a loophole and instead adopt a provision allowing each school to disclose that some of its students do not have vocational intentions.[31]

17. New schools could not readily obtain job commitments from prospective employers. Some other form of remedy is required to insure that new schools not engage in deceptive advertising.

The recommended Rule wholly eliminates the new school-job commitment requirement and allows new schools to use generalized data coupled with certain disclosures.[32]

18. Disclosure of salaries of placed students is important to evaluating the relationship between the school's course and the jobs obtained by enrollees.[33]

19. The three month period for collection of placement and drop-out data is too brief.

We recommend that schools be permitted to determine the placement success of their students four months after they leave the course, not three months as stated in the proposed Rule. The original time period was extended to alleviate certain practical problems.[34] However, extending the period beyond four months would not be advisable. The number of students who obtain jobs after this four-month period is relatively small.[35] In fact, if schools measured placement at some time period beyond four months some students who had obtained related employment may by then have lost their initial jobs, causing students, when surveyed, to state that they were not employed in the field even though they were at one time.

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[30] See Part I, Sections II-A and III-E, supra.

[31] See Part II, Section III, and Section 438.2(b)(5) of the Rule supra.

[32] See Part II, Sections III, and IV-C, supra.

[33] See Part II, Section IV-C, supra.

[34] See Part II, Sections II and III, and Section 438.2(b) of the Rule supra.

Against such a possible slight net improvement in placement rates, one has to balance several factors. The longer the student is out of school the more difficult and costly follow-up efforts become.[36] For example, waiting a year would radically decrease the response rate. The longer a school waits to measure placements, the more dated such information becomes when it is eventually reported to prospective students. The longer the time period between leaving the school and obtaining a job, the more likely that such employment was obtained because of some other factor--such as additional training, or intervening work experience. Moreover, most students, when they are considering enrollment in a course, want to know their chances of getting a job soon after they leave the course, not a year later.

20. Not all residential schools operate on fixed class schedules.

The Rule has been amended to provide differing reporting techniques for home study schools, residential schools with fixed class schedules, and residential schools without fixed class schedules.[37]

21. The disclosure required of schools who do not make job and earnings claims is unsupportable.

The Rule has been amended to provide a series of disclosures which best suit the individual situation of the school.[38]

22. Drop-out rates at proprietary vocational schools are high.[39]

23. The drop-out rate of a school is a material fact that must be disclosed to prospective students irrespective of the reasons that caused students to drop out.[40]

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[35] See Part II, Section IV-C, supra.

[36] Id.

[37] See Part I, Section VII-F, supra.

[38] See Part II, Section II, and Section 438.2(b)(6) of the Rule supra.

[39] See Part I, Section VI, supra.

[40] See Part I, Section VI and Part II, Section IV-C, supra.

24. Drop-out data is readily available to schools at little expense.[41]

25. A school should be permitted to compare its drop-out rate with those of others.

The Rule does not now and never has prevented a school from discussing its drop-out rate with prospective students. It can be done in advertising, it can be done so in the sales interview, it can be done in a letter mailed before, after, or simultaneously with the letter containing the Affirmation Form and disclosures. The seller can even, at the school, orally compare drop-out rates after the student receives the disclosures but before he affirms. The recommended Rule only precludes the addition of any information to the Disclosure Form itself. This restriction is necessary to prevent sellers from burying or confusing the meaning of the disclosures with large amounts of extraneous or even conflicting information.[42]

26. The Record clearly establishes that present cooling-off laws and regulations, including the Commission's own Rule, have proven to be inadequate to provide vocational and home study school students with the protection needed.[43]

27. Substantial evidence on the Record supports the need for a reaffirmation period.[44]

28. Any reaffirmation requirement which is adopted should be so drafted as not to create conflicts with existing Veterans' Administration requirements.

The Recommended Rule has been so drafted.[45]

29. The requirement that certified mail be used should be eliminated.

It has been eliminated.[46]

30. The Notice to the Buyer should be drafted in a more positive manner.

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[41] See Part I, Section VI and Part II, Section IV-C, supra.

[42] See Part II, Section IV-C, supra.

[43] See Part II, Section IV-D, supra.

[44] See Part II, Section IV-D, supra.

[45] See Part II, Section IV-D, supra.

[46] Id.

It has been so redrafted.[47]

31. Schools which enroll students entirely by mail should be exempted from the coverage of this section.

The Recommended Rule does treat such schools differently for purposes of affirmation.[48]

32. Written reminder notices should be permitted during the ten-day period.

The Recommended Rule permits such notices.[49]

33. The ten-day time limit for reaffirmation should be eliminated.

The Recommended Rule eliminates this requirement.[50]

34. The record does support a ten-day cooling-off period and a reaffirmation requirement for enrollments away from the school; the record does not support an extension of the cooling-off period and reaffirmation requirement to enrollments conducted and consumated at the school; a provision should be incorporated permitting students voluntarily to waive the protection if they appear personally at the school to enroll within the ten-day time period.

The presiding officer has concluded that while a reaffirmation period should be made applicable to sales made in the home, it should not be applied to sales made at the school. Given the nature of the types of schools in this industry, this amounts to applying the affirmation concept to correspondence schools while exempting certain residential schools from it altogether.

This conclusion by the presiding officer ignores the substantial evidence on the record which warrants across-the-board application of the affirmation remedy. In arguing that affirmation be made applicable to home study schools, the presiding officer cites three factors:

1. the special nature of the vocational purchase which requires due deliberation;

2. the need to impress the consumer with the

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[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

seriousness of his decision by solemnizing the occasion; and

3. the existence of widespread advertising and sales abuses.

All three factors are equally as applicable to residential schools. The first two are obvious. As to the latter, the record shows, and the presiding officer admits, that the very practices applied by home study school salesmen are found as frequently in residential school sales whether the salesman calls himself a salesman, counselor, or admissions officer.[51] There are instances on the record of the most abusive sales practices and grossest misrepresentations occuring on the school premises and not in the home.[52] In fact, the added factor of the in-school context adds to the potential for abuse by creating additional attitudes of deception--e.g., "admission directors" getting calls from "educational directors" that classes are almost filled.

The presiding officer adds another ground for distinguishing between sales made in the home and at the school.

> A customer in a store who is confronted by an overly aggressive salesman can walk out. A customer in the home who finds he has the same salesman there with him has the problem of how to get the salesman out.[53]

A distinction of this type fails to be a persuasive grounds for a residential school exemption for a variety of reasons. First, even if it were accurate, it wholly fails to comprehend the presiding officer's own previous conclusion that the purchase of a vocational training course is a significant purchase decision. The question of whether residential schools should be required to apply a cooling-off period or an affirmation period is not the least bit enlightened by the supposed ability to "walk out," for the issue is what remedy to apply assuming that he has purchased the course--i.e., that he has not "walked out." If the purchase of vocational training is as significant a choice as the presiding officer found, then the remedy must be fashioned to meet that significance.

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[51] See Part I, Section V, supra. The presiding officer found as follows: "There can be no question that misrepresentations and high pressure sales tactics take place at many of the [residential] schools. Instances of this are documented on the record in a graphic manner." Report of the Presiding Officer, p. 170.

[52] Report of the Presiding Officer, p. 168.

[53] See, e.g., testimony of William Gaines, Tr. 7017.

More importantly, however, the suggestion that a lesser remedy be applied to residential schools because of the consumer's ability to walk out fails because the walking-out concept does not, in fact, apply here. Whatever persuasiveness that distinction may have in the Cooling-Off Trade Regulation Rule as applied to other commodities and sales practices, the record shows a completely different circumstance in the vocational school context. The very nature of the negative sell is to induce the consumer to convince the school that he should be enrolled.[54] Whether it takes place in the home or at the school, the sales pitch is not geared to selling the student but to convince him that the school is not likely to "accept" him easily--unless he can demonstrate the decisive action to enroll now. In this regard, sales in the school are equally as onerous to the consumer as sales in the home.

Moreover, sales in the school may actually be more intimidating to the consumer. Not only is he subjected to the job and earnings pitch used by all salesmen, but his very presence in the school allows him to tour the facilities and to be told of and see all of the supposed advantages of the school--newest equipment, finest teachers, computers on the premises, laboratory equipment. He sees other students in their classrooms busily working toward their "rewarding careers."[55] Indeed, these influences are so strong that most home study school salesmen routinely carry large glossy photos and visual displays of the school, its facilities and equipment, and its busy students into the home in order to recreate the same image. In sum, we find no advantage to being sold at the school rather than at home.

Finally, the presiding officer seeks to convince us by saying that residential schools have a unique problem not faced by home study schools--since some residential schools have fixed class starting dates, an affirmation remedy causes them special problems because of the inability to enroll the student who arrives at the last minute.

Again, we miss the logic of this argument. First, if the sales practices of these schools are as onerous as the presiding officer found--and they are--why would he seek to accommodate a desire to enroll a student on-the-spot? One basic rationale of both cooling-off and affirmation remedies is to provide time to reflect and we see no method to fashion a remedy that provides both reflection and non-reflection simultaneously. Second, the cooling-off remedy proposed by the presiding officer to replace affirmation for residential schools serves no better in this regard. If a last-minute enrollee has either an affirmation remedy or a cooling-off remedy, he can withdraw from the course. The only distinction between the two is the burden to take some positive action to withdraw. The school has no greater security in either case.

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[54] See Part I, Section VI-C(2), supra.

[55] See Part I, Sections IV-B and C, supra.

It should also be made clear that the recommended Rule does not provide any significant stumbling block to a student signing up just before the class starts. For example, a consumer could sign an enrollment agreement on the first day of classes, and continue to attend a few classes until he receives the disclosures in the mail and brings a signed affirmation form back to the school. If he decides not to affirm, he has no obligation. This is the only risk the school takes in enrolling such a student and it would be precisely the same under a cooling-off remedy.

The presiding officer has identified certain problems implicit in the proposed Rule's affirmation requirement. But instead of exempting a whole class of potentially abusive enrollments from that requirement, we have made some changes in that requirement that alleviate difficulties schools have with complying without simultaneously ignoring the substantial evidence that warants an affirmation remedy for all schools.

1. the ten-day period has been removed. The student can affirm at any time as long as this is agreeable to the school. Thus, if a student forgets to affirm, he can deliver his signed enrollment Affirmation Form to the school on the first, second, or even subsequent days of classes. Moreover, the school can continually remind a student to send in his affirmation;

2. schools selling and enrolling entirely by mail do not have to comply with the normal affirmation requirement but can, instead, mail the Affirmation Form to the student at any time and receive it back at any time;

3. the certified mail requirement has been eliminated;

4. the elimination of the ten-day limit on the affirmation period has removed any possible conflict with the VA's existing affirmation requirement;

5. the Notice of Affirmation has been redrafted.

35. *There is no convincing evidence on this record for treating home study schools differently from residence schools insofar as refunds are concerned.*[56]

36. *Automatic cancellation feature of the Rule is essential except the 90-day period for home study schools needs to be adjusted.*[57]

The 90-day automatic cancellation provision has been extended to 120 days. In addition, the school has another 21 days after the 120-day period to send the student any owed refund. The student at anytime, including after he has been cancelled, can remain enrolled simply by informing the school in writing of his intention to do so. Note that the Rule's requirement may be even more generous to the school than the recent FISL regulations' requirements.

37. *Schools can predict their drop-out rates and will know within definable limits exactly what a true pro rata refund policy will cost.*[58]

38. *The situation resulting from the imposition of a pro rata refund will not differ at all from the situation which prevails under existing refund policies.*[59]

39. *The great majority of drop-outs occur early in any course.*[60]

40. *The costs of pro rata will be passed on to the student who completes. The Commission should convene additional hearings to determine the precise amount of these costs. In the interim it should adopt the most liberal of the accrediting association refund policies.*

We have provided at great length a detailed discussion of the factual and policy rationales that support a pro rata refund policy.[61] While we need not replicate that discussion here, we feel that it is important to stress several major points.

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[56] *See* Part I, Sections VI-B and C, and Part II, Section IV-E, *supra*.

[57] *See* Part I, Section VI-B(4), *supra*.

[58] *See* Part II, Section IV-E, *supra*.

[59] *See* Part I, Sections VI-A and B, and Part II, Section IV-E(1), *supra*.

[60] *See* Part II, Section IV-E(1), *supra*.

[61] *See* Part I, Section VI-A(2), *supra*.

We reject this suggestion for a number of reasons. The most liberal of the accrediting association refund policies are themselves unfair and deceptive. This has been described at length earlier.[62] Suffice it to say that they fly in the face of accepted common law principles and are most likely penalty clauses. They create excessive obligations for students who drop out early or do not start at all. The policies employ arbitrary cut-off periods and offer no refund at all past the half-way point. The student's obligation thus bears no relationship to the school's actual costs. This unfairness is compounded by the special characteristics of the vocational school transaction. The consumer is unusually vulnerable, the purchase is an important and expensive one, the decision is difficult and the results of that decision long-lasting.

We also strongly recommend that the Commission reject the presiding officer's suggestion for another reason. Not only are existing accrediting association refund policies unfair and deceptive, but they are incapable of preventing many other widespread unfair and deceptive industry practices. This is proven by the abundant evidence of misrepresentations, unfair sales tactics, high drop-out rates and low placement rates for schools already meeting these industry refund standards.[63] Existing policies provide ample incentives to engage in false, deceptive and unfair practices.

We believe that only a pro rata refund policy is capable of preventing such unfair and deceptive practices as random recruitment of unqualified applicants, varied and often changeable forms of pre-enrollment misrepresentations, unfair sales techniques applied most often by commissioned salespeople, and abuses involving federal programs.[64] These practices are widespread and numerous. The resulting injury is significant. The most direct and effective way to prevent them is through a pro rata refund.

While staff's recommendation of a pro rata refund would be essentially unchanged even if the evidence showed that the impact of the Rule would be to increase costs of programs, all available evidence points to the fact that pro rata will not necessarily have an adverse effect on consumers or schools honestly offering useful services. We have previously described how many schools are already operating successfully utilizing a pro rata refund. For example, schools in a number of states and unaccredited schools participating in government programs offer pro rata refunds.[65]

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[62] See Part II, Section IV-E, supra.

[63] See Part II, Section IV-E, supra.

[64] See Part I supra.

The requirement may force schools with high drop-out rates, harsh refund policies, and unfair and deceptive enrollment practices to alter those practices or diminish their profits. But this is exactly the Rule's purpose. The Rule should not have the effect of substantially raising prices. And any slight increase in prices will be more than offset by a decrease in the consumer injury resulting from existing refund policies and enrollment practices.

In fact, in a competitive market with some schools already offering pro rata refunds, it is hard to see how schools could in fact raise prices significantly. If they could, they would have done so already. As discussed earlier, one would expect a rise in prices only if drop-outs are presently subsidizing graduates or if enrollees found the "insurance" of pro rata refunds worth the extra price.[66] In fact, we predict that--as resources devoted to unfair and deceptive enrollment techniques diminish and schools begin to compete on the basis of drop-out and placement rates, price, and the quality of the course--the product should improve and the price decrease.[67] Despite numerous hearings and lengthy opportunity for written comment, no industry presentation has demonstrated otherwise.

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[65] See Part II, Section IV-E, supra.

[66] See Part I, Section VI-B, supra.

[67] See Part II, Section IV-E, supra.

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